OFFICE COPY

VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 50

EASTERN RAILROAD PRESIDENTS CONFERENCE, ET AL., PETITIONERS,

vs.

NOERR MOTOR FREIGHT, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 3, 1960
CERTIORARI GRANTED APRIL 18, 1960

TABLE OF CONTENTS OF APPENDIX OF EASTERN RAILROAD PRESIDENTS CONFERENCE, ET AL., APPELLANTS IN NO. 12,751 AND APPELLEES IN NO. 12,750.

	Vol. 1 Page
Relevant Docket Entries	1b
Answer of Eastern Railroad Presidents Conference to Plaintiffs' Complaint	3b
Excerpt From Pre-Trial Hearing of March 9, 1956 Before Hon. Thomas J. Clary, J. (In Chambers)	12b
Excerpts From Depositions Which Were Not Offered in Evidence	21b
William M. Pritchard— Cross-Examination	21b
Harry L. Gormley— Cross-Examination	22b
James E. Crass, III— Cross-Examination	26b
Joseph Davidson— Cross-Examination	30b
Ted V. Rodgers, Jr.— Cross-Examination	31b
Christ N. Karn— Cross-Examination	37b
Edward S. Kramer— Cross-Examination	38b
Clem L. Palevich— Cross-Examination	45b
Discussion	45b
Stipulation as to Certain Facts and Agreement as to Scope of Discovery (Court Paper No. 460 Filed May 17, 1956)	47b
Counterclaim	51b-1
Plaintiffs' Reply to Defendants' Counterclaim	51b-9

TABLE OF CONTENTS OF APPENDIX OF EASTERN RAILROAD PRESIDENTS CONFERENCE, ET AL., APPELLANTS IN NO. 12,751 AND APPELLEES IN NO. 12,750 (Continued).

Vol. 1

	Page
Excerpts From Testimony	52b
C. Colburn Hardy—	
Cross-Examination	52b
Patricia Lochridge Hartwell—	
Cross-Examination	53b
Direct Examination	54b
Raymond J. Littlefield—	
Cross-Examination	56b
Direct Examination	57b
Patricia Lochridge Hartwell (Recalled)—	
Direct Examination	60b
Excerpt From Hearing of November 16, 1956 Before Hon. Thomas J. Clary, J. (In Chambers)	61b
Harold A. Thomson—	
Direct Examination	61b
Harold R. Prowell—	
Direct Examination	67b
Jaob K. Mahood—	
Direct Examination	74b
Beatty H. Dimit—	
Direct Examination	80b
Herbert S. Fairbank—	
Direct Examination	84b
Cross-Examination	84b
Clinton B. F. Brill—	
Direct Examination	85b
Offer of Proof—Clinton B. F. Brill	86b
Jack E. Leisch—	
Direct Examination	90b
Offer of Proof—Jack E. Leisch	92b
Richard T. Cash—	
Direct Examination	96b
Offer of Proof—Richard T. Cash	97b

TABLE OF CONTENTS OF APPENDIX OF EASTERN RAILROAD PRESIDENTS CONFERENCE, ET AL., APPELLANTS IN NO. 12,751 AND APPELLEES IN NO. 12,750 (Continued).

	Vol. 1 Page
Offer of Proof—George W. Peak	100b
Offer of Proof—Dr. Burton N. Behling	105b
Warren K. Myers—	
Direct Examination	110b
Offer of Proof—Warren K. Myers	117b
Offer of Proof—Charles E. DeLeuw	118b
Excerpt From Governor Fine's Hearing Held January 17, 1952	121b
Discussion	121b
Burton N. Behling—	
Direct Examination	122b
John C. McMichael—	
Direct Examination	123b
Samuel B. Dennison (Deposition)—	
Cross-Examination	124b
H. L. Gormley (Deposition)—	
Cross-Examination	125b
Floyd B. Noerr (Deposition)—	
Cross-Examination	127b
Exhibit P-3	132b
Exhibit P-5	139b
Exhibit P-21	150b
Exhibit P-24	162b
Exhibit P-29	170b
Exhibit P-144	191b
Exhibit P-198	198b
Exhibit P-199	209b
Exhibit P-231	214b
Exhibit P-282	217b
Exhibit P-322	221b

TABLE OF CONTENTS OF APPENDIX OF EASTERN RAILROAD PRESIDENTS CONFERENCE, ET AL., APPELLANTS IN NO. 12,751 AND APPELLEES IN NO. 12,750 (Continued).

	Vol. 1 Page
Exhibit D-25	223b
Exhibit D-26	229b
Exhibit D-61	233b
Exhibit D-212	237b
Exhibit D-539a	244b
Exhibit D-677	247b
Exhibit A	259b-1
Defendants' Requested Findings of Fact—Plaintiffs' Case	260b
Defendants' Requested Conclusions of Law—Plaintiffs' Case	292b
Defendants' Requested Findings of Fact—Counterclaim	294b
Defendants' Requested Conclusions of Law—Counterclaim	343b
Opinion on Damages, Attorney's Fee and Injunctive Relief	345b
Order in Mills Novelty Co. v. National Dairy Products Corporation, at Law No. 44394 (N. D. Ill. 1936—Unreported)	355b
Memorandum Opinion in Mills Novelty Company v. The Borden Company, 3 CCH Trade Reg. Rep. ¶ 25,041 (S. D. N. Y. 1937—Not Officially Reported) and Relevant Paragraphs of the Complaint	359b
Order in Mills Novelty Co. v. Western Dairies, Inc., at Law No. 7506-M (S. D. Cal. 1937—Unreported) and Relevant Paragraphs of Amended Complaint	365b
Decree in Carolene Products Company v. Evaporated Milk Association, Equity No. 15573 (N. D. Ill. 1937—Unreported)	374b

TABLE OF CONTENTS OF APPENDIX OF EASTERN RAILROAD PRESIDENTS CONFERENCE, ET AL., APPELLANTS IN NO. 12,751 AND APPELLEES IN NO. 12,750 (Continued).

	Vol. 2 Page
Exhibit P-16G	379b
Exhibit P-30	380b
Exhibit P-31	381b
Exhibit P-32	383b
Exhibit P-37	384b
Exhibit P-39	386b
Exhibit P-40	388b
Exhibit P-41	390b
Exhibit P-64	392b
Exhibit P-66	396b
Exhibit P-67A	410b
Exhibit P-67B	413b
Exhibit P-67C	416b
Exhibit P-67D	418b
Exhibit P-67E	420b
Exhibit P-67F	422b
Exhibit P-67G	424b
Exhibit P-67H	426b
Exhibit P-67I	429b
Exhibit P-67J	432b
Exhibit P-67K	434b
Exhibit P-67L	437b
Exhibit P-71	440b
Exhibit P-73	441b
Exhibit P-79	442b
Exhibit P-80	444b
Exhibit P-81	446b

TABLE OF CONTENTS OF APPENDIX OF EASTERN RAILROAD PRESIDENTS CONFERENCE, ET AL., APPELLANTS IN NO. 12,751 AND APPELLEES IN NO. 12,750 (Continued).

	Vol. 2 Page
Exhibit P-83	448b
Exhibit P-84	450b
Exhibit P-85	452b
Exhibit P-86	461b
Exhibit P-87	471b
Exhibit P-88	473b
Exhibit P-89	476b
Exhibit P-94	478b
Exhibit P-103	481b
Exhibit P-105	482b
Exhibit P-112	485b
Exhibit P-118	487b
Exhibit P-119	488b
Exhibit P-126	489b
Exhibit P-168	507b
Exhibit P-235	510b
Exhibit P-273	513b
Exhibit P-274	514b
Exhibit P-283	516b
Exhibit P-291	522b
Exhibit P-293	523b
Exhibit D-7	525b
Exhibit D-9	526b
Exhibit D-57	530b
Exhibit D-62	531b
Exhibit D-63	533b

TABLE OF CONTENTS OF APPENDIX OF EASTERN RAILROAD PRESIDENTS CONFERENCE, ET AL., APPELLANTS IN NO. 12,751 AND APPELLEES IN NO. 12,750 (Continued).

	Vol. 3 Page
Exhibit P-12	537b
Exhibit P-12A	544b
Exhibit P-12B	544b
Exhibit P-13B	545b
Exhibit P-13C	545b
Exhibit P-42	546b
Exhibit P-49	548b
Exhibit P-57	549b
Exhibit P-68	550b
Exhibit P-69	553b
Exhibit P-70	556b
Exhibit P-129	557b
Exhibit P-130	558b
Exhibit P-149	559b
Exhibit P-150	559b
Exhibit P-151	560b
Exhibit P-152	560b
Exhibit P-153	561b
Exhibit P-170	562b
Exhibit P-171	564b
Exhibit P-172	566b
Exhibit P-173	573b
Exhibit P-181	575b
Exhibit P-182	577b
Exhibit P-185	579b
Exhibit P-194	581b
Exhibit P-200	582b
Exhibit P-203	587b

TABLE OF CONTENTS OF APPENDIX OF EASTERN RAILROAD PRESIDENTS CONFERENCE, ET AL., APPELLANTS IN NO. 12,751 AND APPELLEES IN NO. 12,750 (Continued).

	Vol. 3 Page
Exhibit P-250	590b
Exhibit P-254	594b
Exhibit P-295B	595b
Exhibit D-5	596b
Exhibit D-6	601b
Exhibit D-8	612b
Exhibit D-39	613b
Exhibit D-40	614b
Exhibit D-41	623b
Exhibit D-42	628b
Exhibit D-43	629b
Exhibit D-44	630b
Exhibit D-45	636b
Exhibit D-46	638b
Exhibit D-47	644b
Exhibit D-48	667b
Exhibit D-51	669b
Exhibit D-55	670b
Exhibit D-56	671b
Exhibit D-60	672b

	Vol. 4 Original	Print
Proceedings in U.S.C.A. for the Third Circuit		
Appellants' appendix consisting of portions of the record from the U.S.D.C. for the Eastern District of Pennsylvania	A	A
Docket entries	1	1
Complaint	2	1
Answer of The Pennsylvania Railroad Company to complaint	15	13
Exhibit A—Governor Fine's Veto No. 48, Dated January 21, 1952	23	20
Plaintiffs' requests for findings of fact and conclusions of law holding defendants liable for violating the antitrust laws	35	24
Opinion, Clary, J.	50	37
Final decree	186	161
Clerk's certificate (omitted in printing)	192a	167
Appellees' appendix consisting of portions of the record from the U.S.D.C. for the Eastern District of Pennsylvania	192b	168
Transcript of proceedings	193	168
Testimony of Reynolds Girdler— direct	193	168
redirect	201	176
C. Colburn Hardy— direct	204	178
William White— direct	205	180
Thomas J. Deegan, Jr.— direct	207	182
Raymond J. Littlefield— direct	210	184
Exhibit P—11	212	186
Exhibit P—23	213	187
Exhibit P—26	215	189
Exhibit P—27	217	190
Exhibit P—28b	219	192
Exhibit P—28c	220	193
Exhibit P—34	221	193
Exhibit P—35	225	197

	Vol. 4 Original	Print
Exhibit P—109	229	200
Exhibit P—148	231	202
Exhibit P—174	232	202
Exhibit P—178	233	203
Exhibit P—187	235	205
Exhibit P—207	236	206
Exhibit P—261	239	208
Exhibit P—275	241	210
Exhibit D—28	244	212
Opinion, per curiam	246	214
Dissenting opinion, Biggs, Ch.J.	251	219
Judgment	269	236
Clerk's certificate (omitted in printing)	270	236
Order allowing certiorari	271	237

APPENDIX OF EASTERN RAILROAD PRESIDENTS CONFERENCE, ET AL., APPELLANTS IN NO. 12,751 AND APPELLEES IN NO. 12,750.

RELEVANT DOCKET ENTRIES.

1/17/53	Complaint filed.
3/30/53	Answer of Pennsylvania Railroad Co., filed.
9/15/53	Answer of Eastern Railroad Presidents Conference, filed.
1/28/54	Order of Court granting motion of D. F. Bast, et al. to intervene as parties plaintiff, filed.
5/17/56	Stipulation as to certain facts and agreement as to scope of discovery and order approving same, filed.
6/25/56	Stipulation as to counterclaim and order approving same and counterclaim filed.
7/ 3/56	Plaintiffs' reply to defendants' counterclaim filed.
4/ 5/57	Defendants' request for findings of fact and conclusions of law (Plaintiffs' case) and counterclaimants' request for findings of fact and conclusions of law, filed.
10/ 8/57	Plaintiffs' requests for findings of fact and conclusions of law holding defendants liable for violating the antitrust laws (filed with Judge Clary 3-14-57), filed.
10/10/57	Opinion Sur Pleadings & Proof, with findings of fact and conclusions of law, granting injunctive relief and awarding certain damages, etc., filed.

7/22/58 Opinion On Damages, Attorney's Fee and Injunctive Relief filed.

7/22/58 Final decree.

7/31/58 Order of Court dismissing Counterclaim filed by Eastern Railroad Presidents Conference, et al., filed.

7/31/58 Notice of appeal by defendants, filed.

8/18/58 Notice of appeal by plaintiffs, filed.

8/27/58 Order of Court extending time for docketing the appeal filed by defendants on 7/31/58 and the appeal filed by plaintiffs on 8/18/58 to 10/27/58 filed.

ANSWER OF EASTERN RAILROAD PRESIDENTS CONFERENCE TO PLAINTIFFS' COMPLAINT.

Defendant, Eastern Railroad Presidents Conference, makes answer to the Complaint of Plaintiffs, to the extent to which the allegations contained therein are applicable to it, as follows:

First Defense.

1. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint.

2. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Complaint.

3. This defendant denies the allegations of paragraph 3 of the Complaint, except that it admits that it is unincorporated, that it has offices at 143 Liberty Street, New York, New York, that its membership includes the presidents or trustees of approximately 35 railroads operating in the eastern states of the United States and that its expenses are paid by said railroads.

4. This defendant denies the allegations of paragraph 4 of the Complaint, except that it admits that this defendant maintains a functioning organization and a staff of paid personnel; has regular meetings of its members; has recently appointed David I. Mackie as its chairman at a salary of approximately $45,000 a year; and has a number of committees and subcommittees including a Committee on Public Relations.

5. This defendant denies the allegations of paragraph 5 of the Complaint, except that it admits that certain railroads are assessed for the cost of its operations.

6. This defendant denies the allegations of paragraph 6 of the Complaint, except that it admits that there is a Committee on Public Relations consisting of the persons named in paragraph 6 of the Complaint other than John J. Fitzgerald.

7. This defendant denies the allegations of paragraph 7 of the Complaint, except that it admits that on May 19, 1949 its members appointed a committee known as the Competitive Transportation Committee to be assisted by subcommittees designated Legal, Research, and Public Relations, that W. J. Tuohy was named as chairman of the Competitive Transportation Committee, and that the members then appointed to the Competitive Transportation Committee, included, among others, the persons named in paragraph 7 of the Complaint.

8. This defendant denies the allegations of paragraph 8 of the Complaint, except that it admits that certain of the individuals named as defendants in the Complaint are present or past presidents or trustees of certain of the railroads named as defendants in the Complaint, and that certain of such individuals are members of this defendant.

9. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Complaint.

10. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Complaint, except that it admits that Carl Byoir and Associates, Inc. is engaged in business as a public relations firm and has an office at 10 East 40th Street, New York, New York.

11. This defendant is advised by counsel and therefore avers that the allegations of paragraph 11 of the Complaint require no answer. Insofar as such allegations may require answer they are denied.

12. This defendant denies the allegations of paragraph 12 of the Complaint.

13. This defendant denies the allegations of paragraph 13 of the Complaint.

14. This defendant denies the allegations of paragraph 14 of the Complaint.

15. This defendant denies the allegations of paragraph 15 of the Complaint.

16. This defendant denies the allegations of paragraph 16 of the Complaint.

17. This defendant denies the allegations of paragraph 17 of the Complaint.

18. This defendant denies the allegations of paragraph 18 of the Complaint.

19. This defendant denies the allegations of paragraph 19 of the Complaint.

20. This defendant is advised by counsel and therefore avers that the allegations of paragraph 20 of the Complaint with respect to the truck weight limits of New York, Ohio, New Jersey, Delaware, Maryland and Pennsylvania involve the interpretation of statutory or regulatory provisions in the respective states, and as such, require no answer by this defendant. This defendant denies the remaining allegations of paragraph 20 of the Complaint.

21. This defendant denies the allegations of paragraph 21 of the Complaint.

22. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that an important consideration in Governor Fine's vetoing of Senate Bill 615 was the Maryland Road Test No. 1. This defendant denies the remaining allegations of paragraph 22 of the Complaint.

Further answering paragraph 22 of the Complaint, this defendant says that while Maryland Road Test No. 1 was one of the factors mentioned by the governor in his veto message, dated January 21, 1952, copy of which is attached hereto marked Exhibit "A", that factor, or any one of the factors mentioned therein would have justified the veto.

23. This defendant denies the allegations of paragraph 23 of the Complaint, except that it admits that Governor Fine vetoed Senate Bill 615 on January 21, 1952.

24. This defendant denies the allegations of paragraph 24 of the Complaint.

25. This defendant denies the allegations of paragraph 25 of the Complaint.

26. This defendant denies the allegations of paragraph 26 of the Complaint.

27. This defendant denies the allegations of paragraph 27 of the Complaint.

28. This defendant denies the allegations of paragraph 28 of the Complaint.

29. This defendant denies the allegations of paragraph 29 of the Complaint.

30. This defendant denies the allegations of paragraph 30 of the Complaint.

31. This defendant denies the allegations of paragraph 31 of the Complaint.

Second Defense.

32. Venue of the action against this defendant is in the wrong district, because this defendant is an unincorporated association having its principal and only place of business and maintaining its staff in New York City, New York and does not reside in, is not found in, and has no agent in the Eastern District of Pennsylvania.

THIRD DEFENSE.

33. The court lacks jurisdiction over the person of this defendant because

(a) service of process was not made upon an officer, managing or general agent of this defendant or upon an agent authorized by appointment or by law to receive service of process on behalf of this defendant;

(b) this defendant is an unincorporated association having its principal and only place of business and maintaining its staff in New York City, New York and is not an inhabitant of and may not be found within Pennsylvania, and, therefore, was not and is not subject to service of process within the Eastern District of Pennsylvania.

FOURTH DEFENSE.

34. Service of process upon this defendant was insufficient in that such service was not made upon an officer, managing or general agent of this defendant or upon an agent authorized by appointment or by law to receive service of process on behalf of this defendant.

FIFTH DEFENSE.

35. The Complaint fails to state a claim upon which relief can be granted.

SIXTH DEFENSE.

36. The plaintiffs are not entitled to bring this action on behalf of themselves and all others similarly situated.

SEVENTH DEFENSE.

37. The Complaint fails to set forth an action arising under the Constitution, laws or treaties of the United States and this court lacks jurisdiction of the subject matter thereof since the citizenship of the parties is not diverse.

EIGHTH DEFENSE.

38. The Complaint, particularly the allegations thereof relating to the "Fair Truck Bill", pertain to activities of the defendants which are protected by the Constitution of the Commonwealth of Pennsylvania and the Constitution of the United States of America which guarantee to the defendants the right of free speech and the right to apply to those invested with the powers of government for redress of grievances or other proper purposes by petition, address or remonstrance. The relief requested in the Complaint seeks to interfere with these constitutional rights of the defendants to free speech and to petition for which reason, among others, the Complaint fails to state a claim upon which relief can be granted.

NINTH DEFENSE.

39. To the extent that plaintiffs, or any of them, have suffered any damage by reason of the enactment or failure of enactment of any laws in the several states or by reason of the vetoing of any bills in any states, such damages are the result of the sovereign acts of the respective state governments and are not cognizable in this action.

TENTH DEFENSE.

40. Plaintiffs come into this Court with unclean hands and are barred from obtaining injunctive relief or damages by their own illegal conduct. The Pennsylvania Motor Truck Association, on its own behalf and as agent of other plaintiffs, has waged and is waging a malicious campaign by publication and circulation of false and defamatory statements among the general public, public officials and customers of certain defendants, seeking to injure the defendants in their business and, by such false propaganda, to maintain for the plaintiffs an unfair competitive advantage over defendants through the continuation of discriminatory taxes and the relief of plaintiffs from the payment

of their fair share of the cost of construction and maintenance of the public highways.

ELEVENTH DEFENSE.

41. This action was instituted by plaintiffs in bad faith for the purpose of injuring the defendants through the allegation of false, malicious and defamatory statements and for the purpose of attempting to influence legislation, including particularly legislation at the 1953 session of the General Assembly of the Commonwealth of Pennsylvania. In conducting the action plaintiffs have caused to be filed both unsworn and sworn documents containing false and defamatory statements. Copies of these documents have been widely disseminated by plaintiffs for the purpose of generating publicity adverse to defendants. The institution of the action for purposes other than seeking relief from this Court and the conduct of the action in such a way as to make it the vehicle of false propaganda adverse to defendants constitutes an abuse of judicial process.

TWELFTH DEFENSE.

42. Defendants' activities have been in the public interest and cannot form the basis of a claim under the anti-trust laws.

Defendants' activities have consisted of bringing to the attention of the general public and appropriate state legislatures the facts, which plaintiffs have sought to distort and suppress, that heavy over-the-road trucks operated by plaintiffs and others, are causing enormous damage to the nation's highways and that such trucks do not bear their fair share of the cost of building and maintaining such highways.

Studies made by governmental authorities and independent research organizations establish that heavy over-the-road trucks, particularly those carrying axle loads in excess of 18,000 lbs., are substantially responsible for the destruction of the present highways. Such studies also

show that heavy over-the-road trucks require the expenditure of large sums of money for the building of new highways able to sustain the weight of such vehicles and for the repair and rehabilitation of present highways damaged by such vehicles.

Since plaintiffs and others operating heavy over-the-road trucks fail to pay for their proportionate share of the damage that such loads cause the highways over which they move, they are to that extent indirectly subsidized by the general public. Such subsidy to plaintiffs and other operators of heavy over-the-road trucks is being paid from taxes imposed upon the general public for the construction of new highways with standards exceeding those necessary for ordinary highway traffic and for the repair and maintenance of extraordinary damage to present highways caused to a substantial extent by heavy over-the-road trucks. The burden upon other taxpayers, including defendant railroads, whose tax payments are devoted to the construction, repair and maintenance of roads is proportionately greater than it would be if those whose vehicles carry such excess loads were required to pay their fair share of highway costs.

Plaintiffs and other users of large trucks, although operating only approximately 5% of the nation's freight carrying motor vehicles and 1% of the total vehicles using the public streets and highways, have sought to give the impression that they speak for all of the highway users including the operators of 8,700,000 small and medium size trucks and over 44,000,000 passenger cars, and have thus attempted to keep from the public and the legislatures information of the damage to the highways that they, a small fraction of the highway users, have caused and are causing, and to conceal the extent of the subsidy which they have received and are receiving.

Bringing to light these facts as well as facts with regard to consistent violations of the law limiting the weight and speed of heavy trucks which increase both the hazards on the roads and the physical damage thereto, is a legitimate

activity beneficial to the public as a whole and cannot form the basis for an action under the antitrust laws, for such action must be predicated fundamentally upon a disservice rather than a service to the public.

C. Brewster Rhoads,
1421 Chestnut Street,
Philadelphia 2, Pa.
Attorney for Eastern Railroad Presidents Conference.

Of Counsel:

Robert T. McCracken,
Edward G. Taulane, Jr.,
Joseph W. Swain, Jr.,
Montgomery, McCracken, Walker & Rhoads.

EXCERPT FROM PRE-TRIAL HEARING OF MARCH 9, 1956 BEFORE HON. THOMAS J. CLARY, J. (IN CHAMBERS).

---

(17) Mr. Fine: Could you find out how many people you are going to take all together?

Mr. Price: All the rest of the plaintiffs.

Mr. Fine: Fifty?

Mr. Price: Whatever number it is.

The Court: If you saw from an examination of fifteen or twenty of them that you could not elicit from them any useful information for your purposes other than what you obtained in the interrogatories, would you still proceed to examine sixty-seven?

Mr. Price: There would be no assurance that the fifteen that I picked that were duds would be representative of the rest. I think I am entitled to know what each one is prepared to say.

Mr. Fine: They have said it in the interrogatories.

Mr. Kohn: They have given you the information at great pains to us and we objected to it.

The Court: I see a practial situation here rather than a legal situation. I think that the objections raised are to the time-consuming situation and not to any desire to limit you in information.

(18) Mr. Price: If they know nothing, the time factor will not be important. It doesn't take too long to find out that they don't know anything.

Mr. Green: Your Honor, they have answered under oath every question involved in this case in the very lengthy interrogatories which were filed on them, and I think you will agree that you have never seen a more voluminous set of

interrogatories since you have been on the bench. Now, what purpose can be served, except to harass these people, by bringing them from North Carolina and the other places where they are and simply have them repeat under oath the same thing that is already on the record?

Mr. Kohn: And we are not going to use them as witnesses on the conspiracy, and we are willing to so state of record. It is not a case of our holding under a cloak a witness so that you can't examine him and then we spring him on you at the tiral. We are not going to put these people on for that purpose. We are not trying to do anything like that.

Mr. Price: The examination of the plaintiffs that has already been conducted was along lines that the plaintiff's counsel are thoroughly familiar with. They had (19) answered interrogatories the same way. There was no objection made at the time.

Mr. Green: At the time you examined them you hadn't filed your interrogatories.

Mr. Fine: They were also officers of the P. M. T. A., mainly.

Mr. Kohn: We were willing to ride along with counsel two and a half years ago, but when we get down this close to the line, and people have other things to do, I think the accommodation that we were willing to give you then, it is just unfair to ask us to do now. We have only so many hours a day and so much strength and we can't do the impossible.

Mr. Green: By way of contrast, Your Honor, might I point out that we selected certain officials from the defendant railroads, and we were satisfied with our interrogation of them. We made no attempt to take the thirty-one railroads and say, "You must produce one man from every one of those," because we felt that we would only get repetitious matter from them, and then in an effort to be fair

about the thing we simply limited ourselves to the ones that we thought might know something about it. We didn't bring in a fellow from some little road up in (20) Canada or Maine simply to force him to come into New York and make a statement. I think they should take the same approach on it.

The Court: It is always a difficulty in the "big case," where you have multiple actions on the same cause of action. Would it be satisfactory to you, Mr. Price, to examine a certain number of these and have it stipulated of record that except as to a claim for damages, no officer, employee, or witness on behalf of an individual plaintiff will testify as to the conspiracy charged in this action, nor will any information supplied by any officer, employee, agent, or attorney of these individuals be used in the plaintiff's case in respect of the charge of conspiracy?

I don't know that the plaintiffs would be willing to enter into such a stipulation, but if a stipulation of that magnitude —and it is pretty broad—were to be given to you as respects a great number or the majority of these plaintiffs, would you be willing in that case to forego examination of these particular ones, in view of the shortness to the time of trial?

Mr. Price: That would not cover two important elements that occur to me at the moment. One is (21) the nature of the violations that each individual plaintiff may have been guilty of himself in respect to the weight limitations or the general illegality of their operation, which has been developed from a number of the plaintiffs, which has nothing to do with the conspiracy question.

The other question is, not the details of damage, but the general overall nature of damage, whether it was due to a weight limitation being in or a weight limitation being out or for some other cause, not the details of it, because I understand that we would not go into that at this time, at least until after we have had a chance to get the answers of

the twelve or a similar twelve who have been recently suggested; but those two elements I think we are entitled to information about now, and they would not be covered by this suggestion Your Honor just made, and I don't see how they could be.

The Court: Haven't they been pretty well developed in your interrogatories?

Mr. Price: No.

Mr. Kohn: Completely on the first subject, sir.

Mr. Price: Nothing on the subject of damages, because all these interrogatories on even the (22) broad aspects of damage were suspended.

The Court: That I recall, but didn't they have to reply as to violations?

Mr. Kohn: We did.

Mr. Fine: And we have also furnished a list of the twelve.

Mr. Kohn: On the weight limitations, I think you got much more out of the answers to the interrogatories than you may get out of a particular man. How in the world is he going to remember or know what weight violations there were, so that certainly as to that you have got the information.

The Court: My recollection is that I overruled objections and made them answer as to every violation.

Mr. Kohn: We did.

Mr. Green: And they have an answer which in some instances runs into a few pages.

Mr. Kohn: It is much broader than any executive could possibly give you on the stand; and as to the second, we had a procedure worked out here at some length, with Your Honor's guiding cooperation, so really it boils down to the fact that what he wants to examine about he already has.

(23) The Court: The point of my suggestion was this, that you may very well not use a person connected with, say, the Apex Trucking Company—and I am just using that as a nom de plume for some plaintiff who happens to be involved—but the Apex Trucking Company may have furnished you vital information which you will use in the nature of documents or something like that in your proof, and it may well be that it may be something that accidentally came into their possession. Now, certainly, you would discover that in preparation for trial, and if a thing like that were at the last minute sprung on the defendants here, they certainly would be put at a disadvantage by any ruling of mine stopping discovery on that particular point, but in the face of the stipulation, you would be stipulating that information right out of court.

Mr. Kohn: That is right.

Mr. Green: And we will agree to the stipulation.

Mr. Kohn: That is agreeable to us, sir.

The Court: That was my suggestion, Mr. Price, as a way to protect your rights of discovery, but the thing that bothers me is, can you get some evidence out of them that may help you in your defense? The defense is equally (24) as important in discovery as the prosecution. That is the part of it that worries me, and I would have to leave it up to counsel to think out. I think that is something that ought to be thought over, Mr. Price.

Mr. Price: I will be glad to.

The Court: I suggest that we do some thinking along that line, and I will make absolutely no ruling on this at all today. I will say to you, my inclination is that, on general practice, I would permit the examination of a responsible officer, partner, or individual in every case.

Mr. Green: No question.

The Court: That would be my ruling, and I would have no hesitancy in giving a rule like that today. I am not going to give it, however. If reasonably and without harm to either plaintiff or defendant we can come to some agreement to limit it, I see no harm done to the case, and perhaps we have expedited the matter somewhat, which I am trying to do, within limits, however. I would like you to think it over.

Mr. Price: I will do that in the light of the answers to interrogatories which have been filed. Some of them haven't been completed.

(25) The Court: Suppose we postpone further discussion about this until, say, Friday, a week from today.

Mr. Green: What I was going to suggest, Your Honor, was that we take this up after we complete the argument on the counterclaim. Could you fix it at that time?

The Court: I might have to consider that at length, and it may well be that that will run into two or three weeks more.

Mr. Green: Maybe I didn't make myself clear, Your Honor. What I meant was that after we finish the argument on the counterclaim, which is scheduled for the 20th, that then the same persons who are in attendance here sit down with you and see if you can reach any understanding as to this question of noticing additional plaintiffs.

The Court: You may have your answer before that, and it may be along the lines that we have been talking here this afternoon, so why delay it?

Mr. Green: You mean if Mr. Price agrees to your suggestion?

The Court: Yes.

Mr. Green: If he does, that ends it.

(26) The Court: He may or he may not, but I assume he would want to examine carefully the exact wording of my limitation, which will appear in the record.

Mr. Price: Surely.

The Court: And Mr. Schuman will have to get that out first.

Mr. Green: Could I make this suggestion, then, Your Honor, that Mr. Price study what position he wishes to take as to your suggestion. If he can reach a conclusion as to it, he will let us know and let you know, and we will decide whether that terminates it. If we can't, then let us meet after the argument on the counterclaim and thrash the thing over.

The Court: Or I will consider and rule on it at the argument on the counterclaim.

Mr. Price: At or shortly after, I think probably would be the better time, if an ultimate ruling is to be made, because this idea is a novel one. I don't know whether all the defendants represented would care to agree without a complete understanding of what was going on, so that perhaps we ought to have a more general discussion.

The Court: All right, then, I will let it (27) go until then. I am just trying this out as a practical suggestion and not as a legal ruling, but I have made a suggestion that I think is pretty broad in scope, and I think, except as to matters of defense, about which I would know nothing, of course, it would completely preclude the plaintiffs from using any material which they have gotten in the past or might in the future garner from these particular witnesses. I think that that would wipe them out of the case on the question of liability completely.

Mr. Kohn: That is, the witnesses that weren't called.

The Court: The witnesses that weren't called, and you would have to include every witness who does not submit

himself and every plaintiff who does not. If you intend to do it on every one of them, you better put your notices out now. I think Mr. DeLone ought to do that in the next several days and before the 20th, so that you notice every one that you intend to notice and so that any ruling I make will cover the whole situation. I may not have to make any ruling. It may be perfectly agreeable to everyone.

Mr. Price: There are a number of the plaintiffs (28) who would probably would fit into the category which Your Honor has contemplated by this stipulation. There are several, maybe half a dozen, who would not.

The Court: I would expect you to notice them. I would expect you to notice as many as you felt might have information and would not be included in the group that I have tried to describe.

Mr. Price: Yes.

The Court: I don't think that I can ever accurately describe any group.

Mr. Price: I wasn't sure as to the ones that you thought we should notice now. The ones that might be included within the stipulation?

The Court: I would notice every one of them.

Mr. Price: Everybody we can think of?

The Court: Everybody that you would intend under your present prospective procedure. You say that you would like a responsible individual from each.

Mr. Price: That is right.

The Court: You better notice one from each of them, because we are going to handle this, as I told you, on a rather informal basis, but the ruling will be strictly formal.

(29) Mr. Price: Yes.

The Court: I told you that we would handle it on a pretrial basis rather than written motions, argument list, and so forth, and this meeting will be part of the record in the case, so it won't be necessary for all of these present motions to be put down at a certain time. If we are going to expedite this case, we will have to handle it in this manner. While it is informal in nature, it is just as effective.

Mr. Green: Just as binding as a formal ruling.

Mr. Price: We have a record of it, surely.

The Court: So I would like you to think it over and see if, within the limits which the plaintiffs say they are perfectly agreeable to go along, we can expedite discovery.

Mr. Price: I would expect there were a number of the plaintiffs who were in this, shall I say, dud category. There are some of them I am certain are not, that couldn't be covered by the stipulation, because they took active part in various activities of the P. M. T. A., and so on.

The Court: I will say to you right now (30) that I would not under any circumstances put any restriction on the examination of those people.

Mr. Kohn: You may find you have taken some of those already.

Mr. Price: We have taken some already.

The Court: As to anything in that connection, I will say very frankly that I would strongly support your right to discovery, and I am quite sure the plaintiffs would have no objection, could have no objection, to it.

Mr. Price: So that we can list them or segregate them.

The Court: Suppose you do that, but I think for the purpose of the record——

Mr. Price: We can notice them all.

The Court: Notice them all, so that if it is necessary for a ruling on the protective side, the plaintiffs will then be in a position to have on the record that they objected to it and that I overruled them, if I did, or sustained them, and you would have your exception on the record on that particular point, because I think it is most important to preserve rights all the way through here, even at this early stage.

Mr. Price: I should hope to be able to (31) indicate to you at that time which were in the two categories.

The Court: That would be very helpful if you could.

Mr. Price: I will try to do that.

The Court: Then we will get it taken care of in one order.

• • •

EXCERPTS FROM DEPOSITIONS WHICH WERE NOT OFFERED IN EVIDENCE.

EXCERPT FROM DEPOSITION OF WILLIAM M. PRITCHARD.

(711) WILLIAM M. PRITCHARD, having been duly sworn, was examined and testified as follows:

CROSS-EXAMINATION.

By Mr. Price:

Q. Mr. Pritchard, what is your address?

A. 21 North Marshall Street, York, Pa.

Q. And what is your present business?

A. I am vice-president of the Coastal Tank Lines, York, Pa.

• • •

(771) Q. But is there any limitation presently existing in Pennsyl- (772) vania, or that has existed for any period of time, which does you any damage that couldn't be cured or couldn't have been cured by the adoption, the passage and approval of the 1951 truck bill?

A. Well, that is the crux of the whole situation—uniformity between these various states.

Q. Suppose the 1951 bill had been passed and approved instead of vetoed; would that have cured all your troubles so far as the damage that you are talking about is concerned?

A. You mean the suit here?

Q. Yes.

A. Well, I would say generally yes.

Q. Do you know of any exception?

A. No.

• • •

EXCERPT FROM DEPOSITION OF HARRY L. GORMLEY.

(798) HARRY L. GORMLEY, having been duly sworn, was examined and testified as follows:

CROSS-EXAMINATION.

By Mr. Price:

Q. Mr. Gormley, you have been sworn?

A. Yes.

Q. Will you give us your full name and address?

A. My name is Harry L. Gormley, 236 Fairfield Avenue, New Castle, Pennsylvania.

Q. What is your business, Mr. Gormley?

A. I am President of the Keystone-Lawrence Transfer and Storage Company at New Castle, Pennsylvania.

• • •

(961) By Mr. Price:

Q. I think we passed newspaper columnists.

In paragraph 26 of the Complaint there is the averment that the suppliers and customers of the plaintiff were approached by Byoir for purposes of disparagement. What do you mean by that, Mr. Gormley? Were any suppliers and customers of your company approached by any Byoir agents?

A. The members of the Pennsylvania Federated Women's Clubs, the wives, some of the ladies, the wives of some of our customers through the Women's Clubs, yes, they received that information.

Q. Well, is the women's club a supplier or customer of
(962) yours?

A. The members' husbands are customers and suppliers in some cases.

Q. Oh. This was an indirect approach through the distaff side, was it?

A. Not too indirect. After all, when the wife of a supplier is told these things it normally goes to the husband, or if it is the wife of a business man it many times goes to him.

The people who live in the townships from the stuff they were getting from the second-class townships, the Pennsylvania Supervisors Association, many of those people are connected with our customers.

Q. Well now, this averment says that Byoir approached suppliers and customers of the plaintiffs.

A. Many of the——

Q. Do you know any suppliers or customers of your company——

A. Going back——

Q. —who were approached by Byoir?

A. Going back to what I was stating a minute ago, the Grange people also, many of them, are our customers, who were getting this information.

(To the reporter) Will you state Mr. (963) Price's last question please?

Q. Well, the averment in the Complaint is that Byoir approached suppliers and customers of the plaintiffs and disparaged the plaintiffs to them. Are there any customers or suppliers of your company who were approached by Byoir?

A. No.

Q. If so, which ones?

A. Except in the indirect basis which I have stated.

Q. That is through the women's——

A. Various organizations.

Q. Through the women's clubs?

A. Township Supervisors, Grange, and so forth.

Q. So that it was indirect?

A. Right.

Q. There were none that were approached directly that you know of?

A. Not that I know of.

Q. In Paragraph 28 it is averred that the plaintiffs were impeded in their business. In what respect was your company impeded in its business?

A. Well, there were many ways that we would be impeded. The defeat of 615, of course, would cause us to use four trucks or five trucks where normally three would be (964) sufficient if we had received the increased weights provided in the Bill; the fact that in Pennsylvania we have to use what we call a single-axle trailer, which in surrounding states can haul probably 22,000 pounds; and the tandem, we cannot use the tandem, which is legal in the surrounding states. In those states the tandem can haul 35 to 37,000 pounds. In Pennsylvania with that type of equipment we can only load about 22,000 because the equipment is heavier. Therefore, if we went out of Pennsylvania we had equipment which could not haul the payload that could have been hauled on the equipment we would have used if 615 had become law, necessitating four trucks and probably some-

times five trucks to do what three could have done with the modern type of equipment which has been developed during the war and since the war years.

Q. Anything else?

A. Well, that follows through on the basis that when you can't haul the type of payload that is being transported in all of the other states surrounding us and in many other places in the nation we are not in a position to meet many of the rail rates which have been reduced in the past short period of time and over a longer period of time.

(965) Q. Well, then, would it be fair to say that the impeding that is referred to in that paragraph 28 of the Complaint could all have been cured by the passage of 615?

A. No, I don't believe that is correct. Much of the false propaganda that has been put out against us has impeded our reputation. It——

Q. I am referring to impeding your business now.

Mr. Dilworth: Let him finish.

Mr. Price: I wasn't asking about his reputation. Impeded in your business.

A. All right, our business reputation.

By Mr. Price:

Q. Well, how did it impede it?

A. By people not being as interested in giving us business as they would have been if we hadn't been maligned, vilified and all the nasty things said about us and the pictures printed about us, and so forth.

Q. When you say "us" that isn't your company, it is just the truckers?

A. It is my company and the industry.

Q. Was your company singled out for any particular vilification or criticism?

(966) A. Just as a part of the industry, which——

Q. Was your company ever named alone or at all?

A. The company was never named alone, no.

Q. It was never named at all?

A. That is right.

Q. Now, in the impeding of your business can you point to any specific single instance in which you lost any business as a result of any of this campaign?

A. Yes, we have lost business because, as I said, we couldn't move the payload that could be moved with other types of equipment. Consequently, we couldn't meet the rates.

Q. Well, that could have been cured by 615.

A. Yes, that could have been cured by 615.

Q. Now, have you lost any business that couldn't have been cured by 615?

A. Well, that is pretty much an intangible factor. When bad things are said about people any type of business is hurt.

Q. Yes, but are you able to point to any particular customer or any particular business that you lost as a result of that? If you can I would like you to give me the name.

A. No.

* * *

EXCERPT FROM DEPOSITION OF JAMES E. CRASS, III.

(988) JAMES E. CRASS, III, having been duly sworn, was examined and testified as follows:

CROSS-EXAMINATION.

By Mr. Price:

Q. Mr. Crass, will you give me your full name and address?

A. James Edward Crass, III, 1701 North Washington Avenue, Scranton, Pa.

Q. What is your business?

A. I am the President of Seaboard Tank Lines, in the business of transporting petroleum and petroleum products in bulk in tank trucks.

* * *

(1026) Q. Mr. Crass, in view of the source of your information about the various averments to the Complaint, I have very few questions to ask you on that subject, but I will ask you whether you can tell me whether any suppliers (1027) or customers of yours, that is, your individual company, were ever approached by Byoir or Byoir's agents, to your knowledge, for the purpose of disparaging your company or anything else?

A. Suppliers to my company?

Q. Suppliers or customers of yours. I am speaking now of your individual company, your own company as distinguished from the P. M. T. A.

A. No, sir, I do not know of any.

Q. And do you know whether your company has in any way been impeded in its business by anything done by Byoir or any of the defendants?

A. Well, indirectly.

Q. In what respect?

A. Well, through the defeat of 615.

Q. In any other way? 615 was an industry operation or had a general effect on everybody in the industry, of course.

A. That is true.

Q. But was there anything peculiar to your company that was not caused by the defeat of 615?

A. Not by Byoir, no.

Q. By any of the defendants?

A. Yes.

(1028) Q. Which ones or which one?

A. I recall an incident of the Erie Railroad, I believe. We had run from——

Q. Could you give us approximately when this was?

A. I believe in the early part of last year, 1952. We served a community in northeastern Pennsylvania known as Susquehanna, where we hauled petroleum products for the Esso Standard Oil Company from Bayway, New Jersey, to Susquehanna, at a fixed rate—I don't recall exactly what

the rate is now. The Erie Railroad came in and gave a drastic price reduction on the same run, a rate out, even though they weren't doing any of the business, and——

Q. You mean they hadn't been hauling any petroleum?

A. They hadn't been hauling from that particular source.

Q. Can you give me the point of origin and point of destination?

A. I just did—Bayway, New Jersey, to Susquehanna, Pennsylvania.

Q. Oh, yes, yes, excuse me.

Q. And this was done in spite of the fact that the Esso Standard Oil Company would have rather had the products put in there by truck. They cut the rates. So, in order to justify the product continuing to be shipped by truck, we had to lower our rate to meet it.

(1029) Q. Was that rate ever challenged before the ICC?

A. Yes, sir.

Q. By you?

A. Yes.

Q. Anybody else? Did any others join you in the proceedings?

A. I believe there were others in that proceeding.

Q. What did the ICC do?

A. They granted the rate decrease.

Q. They approved the decreased rate fixed by the Erie?

A. Yes, sir.

Q. And that is still in effect?

A. Yes, sir.

Q. Now, is there any other way that you recall that your company was impeded in its business?

A. No, not a direct way, Mr. Price.

Q. Well, by indirect, you mean Bill 615?

A. Yes, sir.

Q. I am excluding Bill 615.

A. And then of course the intangible thing that it is very difficult to put your hand on, the thing of just generally

telling the public what terrible people the truckers are and how irresponsible they are, and they (1030) are not nice people and they don't pay their taxes and they don't pay their way and they overload, and they are careless on the highways. Those are the things that you never know what business you lost because of, because of what has——

Q. Can you point to any loss of business as the result of it?

Mr. Green: Why don't you let him finish?

Mr. Price: I thought he had.

The Witness: I am trying to say, Mr. Price, it is a case there that the man never comes to you and says to you, "The reason I am not shipping by you is because I have heard bad things about you." He just doesn't do business with you. If the story gets around that a certain banker is not a particularly good banker, you don't go in to him and say, "I am not doing business with you because I heard bad things about you." You just go to another bank to do business; so, I say I can't put my finger on these things but I do believe they have existed, they have happened.

Q. Then, except for this rate decrease by the Erie, and except for the veto of 615, there isn't any damage, money damage, that you can point to that your company has suffered, is there?

(1031) A. Not specific.

Q. By "specific," is there or isn't there, that you can point to?

A. No, sir. I said that.

• • •

EXCERPT FROM DEPOSITION OF JOSEPH DAVIDSON.

(1418) JOSEPH DAVIDSON, having been duly sworn, was examined and testified as follows:

CROSS-EXAMINATION.

By Mr. DeLone:

Q. Mr. Davidson, what is your full name?

A. Joseph Davidson.

Q. What is your business?

A. Trucking business.

Q. With what firm?

A. Davidson Transfer and Storage Company. I am the president of Davidson Transfer and Storage Company.

Q. Where is that company located?

A. Headquarters in Baltimore, Maryland, 6201 Pulaski (1419) Highway.

* * *

(1438) Q. Now, it is alleged in paragraph 28 of the complaint that, as a result of the acts of the defendants, the plaintiffs have been impeded in the conduct of their business. Has your business been impeded as the result of the acts of the defendants?

A. We have been harmed, if that is what you refer to as being impeded, in that——

Q. I am just reading you the language of the complaint, which you read yourself.

A. I would say yes in answer to that question.

Q. How have you been harmed?

A. In this repect: In the states in which we operate, we have weight limits that are anywhere from 3½ to 7 tons more carrying capacity than we are allowed in Pennsylvania, and to that extent we are losing revenue on (1439) every unit we operate into Pennsylvania, and to that extent we are very much harmed. In addition to that, we are not in a position to compete with other media of transportation because other media of transportation—I specifically have

in mind the railroads—can and do publish rates, incentive rates, because of their ability to carry more weight, I presume, than we can over the highways, necessitating the use of additional equipment which we wouldn't otherwise have to use if we had a greater weight limit.

Q. Is it fair to say that, so far as you are concerned, the harm that your company has suffered is entirely because the Pennsylvania weight limit is 45,000 pounds and hasn't been raised from that limit?

A. That is right.

Q. And you have no knowledge of any of the specific allegations of the complaint. You seek to attribute that harm to the defendants, do you?

A. I attribute that to anyone that would stand in the way of increasing the weight limits in a state the size of Pennsylvania, when the surrounding states have much greater weight limits, whatever they may be.

Q. Then, you attribute it to the Governor when he vetoed the bill; is that right?

(1440) A. Well, whoever was responsible for—whoever caused him, rather, to come to the conclusion which he did, which he has a perfect right to do, I presume, as the state executive.

* * *

EXCERPT FROM DEPOSITION OF TED V. RODGERS, JR.

(1467) TED V. RODGERS, JR., having been duly sworn, was examined and testified as follows:

CROSS-EXAMINATION.

By Mr. Price:

Q. Give us your full name and address.

A. Ted V. Rodgers, Jr., Scranton, Pennsylvania.

Q. Mr. Rodgers, you are the son of Ted V. Rodgers, Sr.?

A. That is right.

Q. Who is also in the trucking business and has been referred to here before by some of the other witness?

A. That is right.

Q. And you have been here for a day or two, or just yesterday?

A. I have been here for the last three weeks.

Q. Oh, well, you are very familiar then with what has been going on. Have you got a list of the officers of your company available?

A. Not with me, but I can furnish them.

Q. Will you do that by letter to Mr. Dilworth and then he will send it to me.

A. Yes, sir.

Q. That is, the names and addresses of all the officers.

What is the name of your company?

A. Rodgers Motor Lines, Inc.

• • •

(1485) Q. Anything on those things?

A. Although I do know that as far as the Federation of Womens Clubs, my wife was very active and had to get out of it. After all, she belongs to the trucking industry.

Q. I am sorry, I didn't hear the last. She had to get out?

A. Yes, because she belongs in the trucking industry and they had this speaker from—I don't know exactly where she was from, but she was very much against the trucking industry.

Mr. Dilworth: Bessie Q. Mott?

The Witness: I don't know whether it was or not.

By Mr. Price:

Q. Did she tell you her name? It was a woman speaker, was it?

A. That is right.

(1485-A) Q. And she was too much for your wife and she quit the Women's Club?

A. That is right.

• • •

(1486) Q. Mr. Rodgers, you don't know who the woman was who addressed the League of Women Voters?

A. No, I don't.

Q. Your wife didn't stay to find out? As soon as she opened up on the truckers then your wife left?

A. Yes.

• • •

(1487) Q. Has your company been impeded in its business in any way by anything done by any of the defendants?

A. Yes, it has in so far as—well, specifically right in the City of Philadelphia here we enjoyed a movement of freight from a pier, it was import canned goods, and we were moving the stuff to the A & P Tea Company in Scranton, Pa.

Q. Which company?

A. A & P Tea Company, in Scranton, Pa., at a rate of 36 cents per hundred with a minimum weight of 25,000 pounds and the railroads filed a rate of 29.9 and a minimum weight of 36,000 pounds.

(1488) We could have met the rail rate, but we could not haul 36,000 pounds so we lost the business.

Q. Then——

A. Also,——

Q. Excuse me, were you going to say something?

A. Also, we move a lot of steel out of the Buffalo area, the Niagara Frontier, and we use four units to haul the steel on. If we had added weight in Pennsylvania we could use only three units.

Q. Let's take the Philadelphia situation first. There you said you lost business to the railroads because they reduced their current rate.

A. That is right.

Q. Was that a Pennsylvania intrastate rate or an ICC rate?

A. It was both intra- and interstate.

Q. Did you object to the rates?

A. Yes, we did.

Q. What happened?

A. The case is still pending, as I understand it. I am not sure of that.

Q. Well, so far as the rates are concerned, they are now under consideration by the PUC and the ICC, or——

A. That is right.

(1489) Q. —just one of them? By both of them?

A. By both.

Q. By both; and you have some objection pending before both Commissions which is still undetermined?

A. Well, we requested investigation of the canned goods rate.

Q. But whatever investigation has been started hasn't yet been finished, is that it?

A. That is right. Not specifically.

Q. Do you know of any suppliers or customers of your company that any of the defendants approached and disparaged you or your company to them?

A. Not specifically, but I don't know how I would know. I mean, if they approached shippers and disparaged us in any way the shippers would certainly not come and tell us.

Q. Well, he might or he might not.

A. I doubt whether they would.

Q. But the question just is whether you know of any such instance.

A. No, I don't,

Q. So I assume, therefore, that none of your customers or suppliers did report any such disparagement to you, did they?

A. Not that I know of.

(1490) Q. What damage, if any, in addition to what you have mentioned, has your company suffered by virtue of anything done by the defendant or any of them?

A. What damage?

Q. Yes. We spoke about being impeded and I didn't know whether you were using that in a broad sense to cover all damage done to your company or not. Is there any other damage that you can point to that resulted to your company as a result of anything done by the defendants, or any of them?

A. No, nothing specific outside of the fact that they certainly, in their campaign, have hurt us with the shipping public. How much we can't very well determine.

Q. Your gross has increased, has it not, in the last year or two?

A. It increased in '52. 1953 is remaining fairly constant.

Q. Well, we only have a part of '53 to measure.

A. Yes.

Q. But it was better in '52 than it was in '51, wasn't it?

A. Yes, it was.

Q. How about '51 over '50?

A. There was a slight increase in '51 over '50. Of (1491) course, that is more or less not the fact that we increased our business, we just increased our operating territory, we just opened up territory that we had the right to serve but did not serve outside of our truckload business, and that is what increased our gross business.

Q. So you expanded your operating territory?

A. That is right.

Q. Did you add to the number of trucks that you had, the number of units?

A. Yes, we did.

Q. So you had a general expansion in that year. Was that in 1951, or did you start it in 1950?

A. We started in 1950.

Q. And it began to take effect in 1951, is that right?

A. That is right.

Q. Had you had any material change in your operating area prior to 1950?

A. No, and of course our operating authority has not changed, we have the same certificate we have had since the beginning of the company, and of course the certificate we acquired in 1946. But we just opened up territory that we only served on a truckload basis and we are now serving (1492) with both truckload and less than truckload.

Q. I understood you didn't increase your authority but you increased your area of operations within the authority you have always had.

A. That is right.

Q. But was there any material change in that from the time you got the authority in '46 until you made the change in 1950?

A. No.

• • •

(1518) By Mr. Ingersoll:

• • •

(1521) Tell me,—I don't mean to be too personal, but it is interesting about your wife and the Women's Club. Did I understand it that she found such an anti-truck atmosphere in this club that she felt constrained to resign?

A. No, she didn't resign from the club, she left the particular meeting. The meeting as to see whether or not they would join the Federation. They didn't.

Q. There was a group of ladies together making up their minds whether they would join the Federation?

A. That is true.

Q. And then a speaker came, eh?

A. (Witness nods head.)

Q. And started to speak about the trucking industry?

A. Oh, she spoke about the Federation of Women's Clubs in the beginning. I was not there myself, I couldn't say exactly what she said, but she then started to talk about the trucking industry and my wife naturally left.

Q. Everybody else leave?

A. No.

• • •

EXCERPT FROM DEPOSITION OF CHRIST N. KARN.

(152) CHRIST N. KARN, having been duly sworn, was examined and testified as follows:

CROSS-EXAMINATION.

By Mr. Price:

Q. Will you give your address also, Mr. Karn?

A. 345 West Elm Street, Hazelton, Pa.

Q. Will you tell us your business experience, Mr. Karn?

A. Well, I have been in the trucking business since June the 1st, 1915 and all the way through, that is about all I can say about it.

Q. Always the same company?

A. How is that?

Q. Always the same company?

A. Well, yes, it was the same, only it used to be called Karn's Transfer, but now it is a corporation, Karn's Transfer, Incorporated.

• • •

(1543) Q. Now, can you point to any case in which any supplier or customer of yours was approached by Byoir or anybody representing Byoir, and told stories about you, bad stories?

A. No, I can't point to any particular case, no.

Q. Did you ever hear of any such case?

A. No, I didn't.

Q. Can you tell any instance in which your business was impeded by anything done by the defendants or any of them?

A. Well, it was—as I say, the main thing was that it was giving us such a bad reputation.

Q. Was your business impeded in any way that you can point to?

A. The only thing that was impeded was on our tonnage basis, that way, if that is what you mean.

Q. I don't know. Anyway at all that occurs to you that your business was impeded by anything that the defendants did.

A. I don't know just—the only thing I can say or that I can see was that we were held back, if you want (1544) to put it that way, by not being able to haul our gross tonnage of what we should be hauling in there. We were impeded very much that way.

Q. That is because the weight limits in Pennsylvania weren't as high as you would like to have them?

A. That is right.

Q. But that would mean you would have to have a change of the Pennsylvania law in order to let you haul this additional amount?

A. Yes, that is right.

Q. Were you impeded in any way except by the laws of Pennsylvania, imposing this limitation on the amount of weight you could carry?

A. To my knowledge right now, no, I don't know of anything else in there, except the restrictions on the weights.

• • •

EXCERPT FROM DEPOSITION OF EDWARD S. KRAMER.

(1573) EDWARD S. KRAMER, having been duly sworn, was examined and testified as follows:

CROSS-EXAMINATION.

By Mr. Price:

Q. Mr. Kramer, would you give us your full name and address, please?

A. Edward S. Kramer, K-r-a-m-e-r, 14648 Greenview, Detroit, Michigan.

Q. Will you tell us your business experience, please?

A. My business experience has been varied. I am familiar with motor transportation business as well as

service of motor vehicles, sales of motor vehicles, sales of real estate, designing of terminals, construction of terminals, pretty much of a jack-of-all-trades in connection (1574) with the Kramer Brothers Freight Lines.

Q. Well, have you always been associated with Kramer Brothers Freight Lines?

A. Since 1936 on a full-time basis.

Q. That is the name of your company, isn't it?

A. Kramer Brothers Freight Lines, Inc., yes.

Q. That is incorporated where?

A. In Detroit, Michigan.

Q. A Michigan company?

A. A Michigan corporation.

Q. What is your connection with that company?

A. I am president.

• • •

(1601) Q. That made it impossible for you to carry as much in Pennsylvania as you would have been able to if that bill had gone through?

A. That is correct. And in that regard, we did, within two months after the veto of that bill, purchase 100 single-axel aluminum trailers with magnesium floors for our operations through Pennsylvania, and those were at a cost of about $400,000. Had that weight law gone through, we would have been able to haul about 10,000 pounds more freight per unit, with very little additional cost. Those 10,000 pounds per unit—and we are one of the biggest users of the (1602) Pennsylvania Turnpike, moving some 200 loads a day across Pennsylvania, and we do pay some $300,000 to the Pennsylvania Turnpike each year to operate over that road.

At our average rate of $1.50 a hundred, taking those 200 trailers and 10,000 pounds on each unit, a movement of 200 units a day and the overhead, it would mean approximately a $7,000,000 gross potential in business as far as Kramer Brothers Freight Lines is concerned.

Q. That is, if the weight bill had gone through, you would have been able to make $7,000,000 more on your existing equipment?

A. That is right.

Q. And that is just on your Pennsylvania business?

A. No.

Q. I mean the business going through Pennsylvania.

A. Through Pennsylvania and within Pennsylvania.

Q. Yes. But it wouldn't affect any of the business that you had outside of Pennsylvania? It was either on freight for delivery in Pennsylvania or freight that was going to pass through Pennsylvania from one border to the other, is that correct?

A. That is right. I am considering the 200 units (1603) a day we operate across Pennsylvania each day.

Q. When you say "across," that means from one border to the other, straight through without stopping?

A. Or it could mean from Philadelphia to Pittsburgh. That is pretty close to a border, too.

Q. That is what I was thinking about. It is either from Philadelphia to Pittsburgh or it is from some place in Ohio to some place in Jersey or beyond?

A. That is correct.

Q. Now, the $1.50 a hundred—what is that?

A. That would be the portion of the revenue that, pro rata on the mileage, is our system average rate.

Q. Would that be—let's see if I understand it correctly. You would get $1.50 for every hundred pounds you hauled from the western border of Pennsylvania to the eastern border, is that it?

A. That is right. No, I am sorry, let me correct that. That would be the true revenue. The potential for Kramer Brothers would be $7,000,000 more if we weren't restricted to the Pennsylvania weight limit, and had we had the higher limit it would enable us to haul 10,000 pounds more on each unit in our overhead territory.

Q. But the $1.50 a hundred, I am not quite sure how (1604) that operates. Is that the $1.50 a hundred for how many miles, 300 miles, the length of Pennsylvania?

A. No, that would be more. I correct myself on that. It would be from the eastern seaboard points to points in Ohio, Michigan, Illinois.

Q. The $1.50 is the freight from the eastern seaboard to the ultimate destination?

A. That is right.

Q. Overall?

A. Yes.

Q. So that the Pennsylvania haul would be a part of that, something less than the $1.50 a hundred?

A. But the freight movement that I am speaking of is actually an overhead movement.

(1605) Q. I understand.

A. It is a movement from the East to the West through Pennsylvania.

Q. That is right.

A. And if we can't haul it through Pennsylvania we can't haul it the rest of the way, so we are talking about the overall revenue.

Q. That is right, sure. But I just wanted to make it clear that the $1.50 is more than the actual pro rated revenue across the State of Pennsylvania.

A. That is correct.

Q. The $1.50 is the total rate from we will say Jersey City to some place in Ohio?

A. That is right, it is the average of rates in the overhead territory that we now—of the commodities that we now haul.

Q. Yes. So 10,000 pounds would be $150 more revenue, wouldn't it, at that rate? Is my arithmetic correct?

A. If your arithmetic is correct, that is correct.

Q. Well, you are a trucker, Mr. Kramer, you ought to be able to do those things a whole lot faster than I can.

Well, we will assume that that is right. That then would be $150 more revenue for 10,000 pounds on that kind of a haul.

(1606) Now, on these aluminum jobs that you bought, how much additional weight did they give you, additional weight for the payload, I mean?

A. Against a heavier trailer, those trailers weighed, if I recall correctly, about 6800 to 7,000 pounds. They vary in between themselves one hundred pounds or so even though they are a light unit, and against the older type single-axle trailers, that would weigh nine, ten, eleven thousand pounds; also, against any tandem equipment that may be pressed into service that could handle a lesser volume due to the increased weight of the tandem trailer.

Q. Well, could you say on the average how much additional payload you got out of using this lighter equipment per unit, per trip?

A. Well, the difference would be the difference in weight of 6800 pounds to the weight of——

Q. Would it average four thousand pounds?

A. I would say four thousand pounds average, yes.

Q. So that you were able to salvage four out of the ten by a different type of equipment?

A. That is right, and a huge investment.

Q. Sure, you have to make an investment in any equipment, I guess.

Do you use that lighter equipment anywhere (1607) else, too, outside of Pennsylvania?

A. No, it is primarily used in the overhead operation because it isn't practical to send a single-axle trailer in between points like Detroit and Chicago or Detroit and Cleveland, and points in the West where we can take and utilize tandem equipment and can take and haul 32,000 pounds legally in those States.

Q. Well, now that is one way in which your company was impeded. Can you name any other?

A. Well, the most recent ... dent was here just yesterday at this meeting I mentioned having last night with the managers. Our Philadelphia manager informed me that the rate on the product from Socony Vacuum in Paulsboro, New Jersey going to McKees Rocks at Pittsburgh, a business that we have enjoyed for the last ten years,——

Q. Is that tank business or——

A. It is a drum stock.

Q. You don't have to have tank equipment for it?

A. No, it is not a tank item.

The rate was 59 cents, and the rails came through here April 25th and put in a 35,000-pound minimum weight, which isn't practical to handle on any equipment in Pennsylvania; it is legal to start with, makes it impractical for us to compete, and along with it they reduced (1608) the rate to 46 cents.

Q. Had you been hauling that freight before?

A. We had been hauling it for the past ten years, as I said before.

Q. Did you haul it all, did you have a monopoly of that business?

A. No, we do not. It is a service that we have given that rates are comparable with other carriers and yet the only thing we have to sell is service, and if we don't give it we don't have the business.

Q. Did you share that business with other truckers?

A. It could have been possible. I don't know, I am not in a position to answer that question now.

Q. Well, I was wondering if you had it all or whether you divided it with somebody else. You wouldn't know that?

A. I wouldn't know that.

Q. But then the railroads reduced this rate just last month, you say?

A. That is right.

Mr. Dilworth: Not last month.

A. No.

Mr. Dilworth: The 25th of April.

A. Just a couple days ago, April 25th.

(1609) By Mr. Price:

Q. Oh, the 25th day of April, this month, then.

A. And we were notified by Socony Vacuum's traffic manager, or Bill Lutz, our terminal manager here in Philadelphia was notified yesterday that we would take and lose approximately a million pounds a month to The Pennsylvania Railroad effective with this rate reduction.

Now, if we had the increased weight limit in Pennsylvania, had the bill not been vetoed, it would have been practical for us to meet the 46-cent rate and we would have been able to haul 32,000 pounds and 35,000 on ideal equipment and we could have met that competition. But due to the weight limitation it isn't practical for us to haul this truckload traffic at the 46-cent rate and it isn't—well, it would be a loss, actually, to try to handle it.

Q. All right. Now, is there anything else that you can point to which has impeded your business?

A. Well, there has been some vilification of the industry and any vilification to the industry would mean harm to me or to my business.

Q. What vilification?

A. Well, from what has been written in the papers, any half-truths or false remarks that may be slanted or cast (1610) reflection on our industry certainly isn't good for it as it wouldn't be good for any other industry if remarks or anything was done to defame it in any way.

Q. Can you point to any such statements in the papers or magazines or other things? Can you name any of these that occur to you?

A. I can't right at the moment, no.

Q. Were you just speaking of general statements?

A. That is right.

Q. You can't recall any particular one that sticks out in your mind that you can refer me to?

A. No.

Q. Has your company been damaged in any other way in addition to the three that you have mentioned, by anything done by the defendants?

A. I can't recall at the moment.

• • •

EXCERPT FROM DEPOSITION OF CLEM L. PALEVICH.

(1942) CLEM L. PALEVICH, having been duly sworn, was examined and testified as follows:

CROSS-EXAMINATION.

By Mr. Price:

Q. Mr. Palevich, will you give your full name and address for the record, please?

A. Clem L. Palevich, 1704 Green Ridge Street, Dunmore, Pennsylvania.

Q. And with what company are you connected?

A. Fowler & Williams, Inc.

Q. What is your connection with that company?

A. I am secretary, assistant treasurer and general manager.

• • •

(1995) Mr. Kohn: Gentlemen, I was wondering—and quite seriously wondering, and wanted to suggest—in view of the depositions you have taken today, and the fact that this is obviously costing you more than it's costing us, and in all probability, at least, there's a possibility that we shall recoup our costs, I was wondering whether we couldn't enter into a stipulation that if the other gentlemen whom you have designated to appear here were (1996) questioned—that their answers would be substantially in

the same vein, and we could dispense with further depositions.

Now, we have other people available, as you see, and I'm just wondering if it's really profiting anybody and whether you haven't taken a fair enough sampling.

It seems to me that you've got the sort of sampling that you sought to get by your stipulation, and I think now we have it in more detail—the sort of thing we were discussing when we were talking this matter over with Judge Clary, and you have now got, in broader language, what you were trying to achieve.

If we could now stipulate that the answers are substantially the same, or that the answers are typical, and call it a day——

• • • •

(2003) Mr. Price: I hadn't understood until this moment that the claim was being limited to that, because a lot of these questions I have asked were designed to explore surrounding territory, and I'm quite sure that if my present understanding is correct, that the only damage that is being claimed is that which resulted directly from the inability of these various plaintiffs to carry more than the Pennsylvania law permitted, then it is certainly going to very much diminish the inquiries that we would be interested in making, and quite conceivably, eliminate most of these depositions.

Mr. Kohn: I would think so.

Mr. Price: Is my understanding in that regard correct, so that I can——

Mr. Kohn: Your understanding of my understanding (2004) is correct. I would want, finally, before we put it on the dotted line, to check with Bob and Aaron, who have been in this thing much longer than I, but you have correctly stated what my understanding of the situation is.

• • • •

STIPULATION AS TO CERTAIN FACTS AND AGREEMENT AS TO SCOPE OF DISCOVERY (COURT PAPER NO. 460 FILED MAY 17, 1956).

Subject to the approval of the Court, it is hereby stipulated by and between counsel for plaintiffs and counsel for defendants as follows:

Plaintiffs agree that:

1. No plaintiff (except plaintiff Pennsylvania Motor Truck Association) nor any of its directors, officers or employes personally observed any of the acts which are the subject of the allegations of paragraphs 7 and 12 to 27 inclusive of the complaint and, therefore, no such plaintiff or its directors, officers or employes has any personal knowledge of the acts which are the subject of said allegations.

2. No plaintiff (except plaintiff Pennsylvania Motor Truck Association) has paid any counsel fees or expenses in connection with this suit, except as stated in paragraph 4.

3. The only damages claimed by the plaintiffs (except plaintiff Pennsylvania Motor Truck Association) are those that each of them may have suffered because of its inability to carry more than the weight limits fixed by the laws of Pennsylvania prior to the change in the law in 1955.

4. Since 1949 plaintiffs (except plaintiff Pennsylvania Motor Truck Association) have supported the activities of the Pennsylvania Motor Truck Association by making contributions to the cost of such activities and none has objected to any such activities.

5. At the trial no evidence will be offered in support of the complaint concerning any incident involving or relating particularly to any particular plaintiff (except plaintiff Pennsylvania Motor Truck Association), its directors,

officers or employes, unless such plaintiff's deposition has been taken either individually or through an officer of the company, except upon the issue of damages as defined by paragraph 3 of this stipulation. This paragraph shall not preclude the offer of evidence in support of the complaint concerning any incident involving or relating generally either to the trucking industry or the plaintiffs.

6. At the trial no director, officer or employe of any plaintiff (except salaried officers and employes of plaintiff Pennsylvania Motor Truck Association and other officers of Pennsylvania Motor Truck Association whose depositions have already been taken by defendants) will be called as a witness in support of the complaint except as to the issue of damages as defined by paragraph 3, nor will any document in the possession or control of any such plaintiff be offered in evidence in support of the complaint except with reference to such damages, unless such plaintiff's deposition has been taken either individually or through an officer of the company.

Defendants agree that they will not take the depositions of the following named plaintiffs, their directors, officers or employes before trial, and any other plaintiffs who file answers to interrogatories prior to June 1, 1956:

Akers Motor Lines, Inc.
D. F. Bast
A. W. Bauman, Jr. Trucking Company
G. C. Braden Trucking Company
Ed. Chadderton Trucking
Cooper-Jarrett, Inc.
C. W. Dillie
Eastern Freight-Ways, Inc.
Fischbach Trucking Company
Friedman's Express
Hall's Motor Transit Company
Edward G. Horn Trucking Co.
Lansdale Transportation Co., Inc.

Lombard Bros. Inc.
F. W. Lusk Transfer Company
Martin Bros.
Martsolf Bros.
W. J. McCormick Truck Transportation
Miller Motor Express, Inc.
Lester C. Newton Trucking Company
Pennsylvania Transfer Company
Suwak Trucking Company
Yale Transport Corporation

This paragraph shall not preclude the defendants from taking the depositions of such plaintiffs, their directors, officers and employes on the issue of damages only, prior to the offer of any evidence concerning the alleged damage to any of such plaintiffs, but no such depositions shall be taken until after such plaintiffs have been served with and given a reasonable opportunity to answer interrogatories on the subject of their damages, and then only if the defendants deem such depositions necessary, subject however to the provisions of F. R. C. P. 30(b), bearing in mind the scheduled trial date of October 1, 1956.

DILWORTH, PAXSON, KALISH & GREEN,
By H. E. KOHN,
Attorneys for Plaintiffs.

JAMES B. ANDERSON,
James B. Anderson,
Attorney for Union Railroad Company and Fred W. Okie.

BALLARD, SPAHR, ANDREWS & INGERSOLL,
By R. STURGIS INGERSOLL,
Attorneys for Carl Byoir & Associates, Inc.

BARNES, DECHERT, PRICE, MYERS & RHOADS,
By PHILIP PRICE,
Attorneys for The Pennsylvania Railroad Company, M. W. Clement, Walter S. Franklin.

HAROLD B. BORNEMANN,
Harold B. Bornemann,
Attorney for Lehigh & New England Railroad Company.

DRINKER, BIDDLE & REATH,
By CHAS. J. BIDDLE,
Attorneys for The Central Railroad Company of New Jersey, Central Railroad Company of Pennsylvania, Norfolk & Western Railway Company, and Western Maryland Railway.

GUCKES, SHRADER & BURTT,
By JOHN A. SHRADER,
Attorneys for The Baltimore & Ohio Railroad Company.

MONTGOMERY, MCCRACKEN, WALKER & RHOADS,
By C. BREWSTER RHOADS,
Attorneys for Eastern Railroad Presidents Conference.

MORGAN, LEWIS & BOCKIUS,
By ARTHUR LITTLETON,
Attorneys for Chesapeake & Ohio Railway Company, Delaware, Lackawanna & Western Railroad Company, Erie Railroad Company, Lehigh & Hudson River Railroad, New York, Chicago, & St. Louis Railroad Company, The Reading Company, R. W. Brown and Joseph A. Fisher.

FRANCIS J. MYERS,
Francis Myers,
Attorney for The New York Central Railroad Company.

PEPPER, BODINE, FRICK, SCHEETZ & HAMILTON,
By PAUL MALONEY,
Attorneys for Pittsburgh & West Virginia Railway and Charles J. Graham.

SAUL, EWING, REMICK & SAUL,
By HARRY E. SPROGELL,
Attorneys for Lehigh Valley Railroad Company.

STRADLEY, RONON, STEVENS & YOUNG,
By DANIEL MUNGALL, JR.,
Attorneys for Boston & Maine Railroad, Canadian Pacific Railway Company, Delaware & Hudson Railroad, Maine Central Railroad Company and New York, New Haven & Hartford Railroad Company.

WHITE, WILLIAMS & SCOTT,
By JOHN LEWIS EVANS,
Attorneys for New York, Ontario & Western Railway.

Dated: 5/17/56

Approved:

THOMAS J. CLARY, J.

COUNTERCLAIM.

Defendants, The Baltimore & Ohio Railroad Company, Boston & Maine Railroad, The Central Railroad Company of New Jersey, Central Railroad Company of Pennsylvania, Delaware & Hudson Railroad Corporation, Eastern Railroad Presidents Conference, Erie Railroad Company, Lehigh & New England Railroad Company, Lehigh Valley Railroad Company, Maine Central Railroad Company, The New York Central Railroad Company, New York, New Haven & Hartford Railroad Company, New York, Ontario & Western Railway, Norfolk & Western Railway Company, The Pennsylvania Railroad Company, The Reading Company, and Western Maryland Railway, for their counterclaim allege as follows:

1. Counterclaimants, other than counterclaimant, Eastern Railroad Presidents Conference, are railroads which operate in what is generally known as eastern territory, namely, that generally east of the Mississippi and north of the Potomac Rivers and are engaged in the transportation of passengers and the hauling of freight in interstate commerce.

2. Counterclaimant, Eastern Railroad Presidents Conference, is an unincorporated association having its principal and only office at 143 Liberty Street, New York, New York. Its membership consists in the main of the presidents or trustees of the other counterclaimants described in paragraph 1.

3. Plaintiffs, against whom this counterclaim is brought, other than plaintiff, Pennsylvania Motor Truck Association (hereinafter referred to as PMTA), operate trucks in Pennsylvania and in other states within the eastern part of the United States, and are engaged in the long-distance hauling of freight in interstate commerce in competition with counterclaimants.

4. Plaintiff PMTA is a Pennsylvania corporation, whose membership includes, among others, most of the plaintiffs.

5. This counterclaim arises under the antitrust laws of the United States and more particularly under Sections 1 and 2 of the Act of July 2, 1890 (26 Stat. 209, 15 U. S. C. A. §§ 1 and 2), commonly known as the Sherman Act. Jurisdiction thereof is conferred upon this court by the institution of the action in which this counterclaim is filed and by Sections 4, 12 and 16 of the Act of October 15, 1914, as amended (38 Stat. 731, 736 and 737, 15 U. S. C. A. §§ 15, 22 and 26), commonly known as the Clayton Act.

6. Beginning in or about the year 1945, the exact date being to the counterclaimants unknown, and continuing to and including the date of this counterclaim, plaintiffs have been engaged, and are now engaged in the manner and by the means hereinafter alleged (particularly through the agency of plaintiff PMTA and Allied Associates, Inc., a publicity agent retained by plaintiffs to advise, assist and represent them) in a combination and conspiracy in unreasonable restraint of trade and commerce among the several states in violation of Section 1 of the Sherman Act; and said plaintiffs, in said manner and by said means, have been and are engaged in a combination and conspiracy to monopolize, and have attempted and are attempting to monopolize such trade and commerce in violation of Section 2 of the said Act; all for the purpose and with the intent of

(a) Restraining and limiting the competition of counterclaimants with plaintiffs in long-distance hauling of freight in interstate commerce;

(b) Restraining and limiting counterclaimants' development, growth and expansion as competitors of long-distance-hauling motor carriers in such interstate commerce;

(c) Preventing the establishment of fair competitive conditions between plaintiffs and counterclaimants;

(d) Destroying the favorable relations existing between counterclaimants and their customers;

(e) Destroying the favorable relations existing between counterclaimants and the major segment of the trucking industry;

(f) Creating in the minds of public officials and the general public an unfavorable attitude toward counterclaimants;

(g) Increasing counterclaimants' cost of doing business;

(h) Acquiring and maintaining an unjust competitive advantage for plaintiffs over counterclaimants through concealed indirect subsidies to plaintiffs borne by the general public.

Plaintiffs are continuing and threaten to and will continue said offenses unless the relief hereinafter prayed for in this counterclaim is granted.

7. As a part of the aforesaid combination and conspiracy and to accomplish the purposes and objectives thereof, plaintiffs and other participants in the said combination and conspiracy have combined to utilize and have utilized, among others, the following methods and means:

(a) Circulated and caused to be circulated, false, malicious and defamatory statements concerning counterclaimants to the effect: that they do not pay proper taxes; that they have been dishonest in their dealings with farmers and farm organizations; that they have improperly and unjustly attacked the trucking industry; that they have bribed public officials and officials of independent organizations; that they have misused the mails; that they have published false and misleading reports on the Maryland Road Test; that they improperly

seek to maintain high freight rates to the detriment of the shipping public; and that they have conspired to monopolize and interfere with interstate commerce in the long-distance hauling of freight; et cetera;

(b) Disseminated, and caused to be disseminated, false, malicious and defamatory statements concerning counterclaimants, their credit and financial standing to bankers, brokers, investors and others in the financial world;

(c) Systematically and deliberately violated the weight limitations, traffic and other laws relating to the highways to further their unfair subsidized competitive advantage over the counterclaimants;

(d) Instituted and maintained this action in bad faith, in abuse of the judicial process, to cause counterclaimants great expense, to harass counterclaimants, and to provide an opportunity for the repetition and dissemination of the false, malicious and defamatory statements set forth in paragraph 7(a) hereof and other false, malicious and defamatory statements;

(e) Obstructed, attempted to intimidate, and attempted to prevent counterclaimants from bringing about fair and equitable competitive conditions (1) through the exercise of their constitutional right to petition the legislatures of the several states for legislative action designed to promote fair and equitable competitive conditions, and (2) through the exercise of their constitutional right to expose plaintiffs' distortions and misrepresentations of competitive conditions in the business of long-distance hauling of freight, in the following manner:

i. By stimulating and instigating litigation by third parties against counterclaimants and others who opposed legislation desired by plaintiffs or supported legislation opposed by plaintiffs;

ii. By seeking, through false, malicious and defamatory statements and other improper means, to impose on counterclaimants unreasonable burdens and restrictions which would interfere with the maintenance of efficient, expeditious and economical transportation of freight and passengers in interstate commerce;

iii. By creating, through false, malicious and defamatory statements and other improper means, an atmosphere of hostility toward counterclaimants among government officials, municipalities, shippers, suppliers, banking houses, investors and others; and

iv. By disseminating false, malicious and defamatory statements as set forth in paragraphs 7(a) and (b), together with other false, malicious and defamatory statements, and by instituting and maintaining the action set forth in paragraph 7(d) hereof.

8. The aforesaid combinations and conspiracies, and the attempt to monopolize, have had, as intended by plaintiffs, the effect of unreasonably restraining trade and commerce in the hauling of freight to the detriment of the public interest in that:

(a) The cost of counterclaimants' operations have been increased, and will be further substantially increased, unless the activities of plaintiffs are restrained, with the result that (1) the cost of the transportation of freight to counterclaimants' customers will be increased and (2) the well-being of the entire railroad industry and sound economic conditions in transportation will be seriously impaired to the further detriment of the public dependent upon that industry for safe, adequate, economical and efficient service;

(b) The general public has been required to continue to pay an indirect subsidy to plaintiffs through taxes imposed for the construction of highways with standards exceeding those necessary for ordinary highway traffic and for the repair and maintenance of the extraordinary damage to present highways caused to a substantial extent by heavy trucks.

9. The combinations and conspiracies, the attempt to monopolize, and the acts performed pursuant thereto have been the proximate cause of great and continuing damage to the counterclaimants:

(a) By preventing the establishment of fair competitive conditions and thereby causing wide diversion of substantial traffic from the counterclaimants;

(b) By disparaging and damaging the counterclaimants in their business relationships with the public thereby adversely affecting those relationships, by impeding them in the legitimate conduct of their business, by increasing their expenses of operation, by damaging their credit and causing high interest rates on securities issued by them, and by causing them to lose accounts, profits, and prospective profits;

(c) By impeding counterclaimants' development, growth and expansion as competitors of long-distance-hauling motor carriers;

(d) By forcing the counterclaimants to incur substantial costs and to expend great efforts to defend themselves against plaintiffs' activities.

The damages to each respective counterclaimant cannot at present be measured with exactness and precision because of the nature of the injuries done to them, for which the plaintiffs are solely responsible. The damages to the counterclaimants in the aggregate are, when trebled under the antitrust laws, in excess of $120,000,000.

10. Each counterclaimant is suffering and will continue to suffer irreparable harm and injury unless the plaintiffs are enjoined from their conspiracy, from the acts complained of herein or from any other acts in pursuance of their conspiracy.

WHEREFORE, counterclaimants demand:

(a) That each and everyone of the plaintiffs, their subsidiaries, affiliates and successors, and their officers, employees and agents; or any persons acting for or in concert with them be enjoined and restrained from continuing the practices complained of herein or from taking any action in furtherance of or calculated to perpetuate their illegal conspiracy;

(b) That each and everyone of the plaintiffs be required to pay to each of the counterclaimants threefold the damages determined to have been suffered by such counterclaimant together with costs and reasonable attorneys' fees.

BARNES, DECHERT, PRICE, MYERS & RHOADS

By: PHILIP PRICE,

Attorneys for The Pennsylvania Railroad Company.

DRINKER, BIDDLE & REATH

By: FRANCIS HOPKINSON,

Attorneys for The Central Railroad Company of New Jersey, Central Railroad Company of Pennsylvania, Norfolk & Western Railway Company, Western Maryland Railway.

GUCKLES, SHRADER & BURTT

By: JOHN A. SHRADER,

Attorneys for The Baltimore & Ohio Railroad Company.

MONTGOMERY, MCCRACKEN, WALKER & RHOADS

By: JOSEPH W. SWAIN, JR.,

Attorneys for Eastern Railroad Presidents Conference.

MORGAN, LEWIS & BOCKIUS

By: ARTHUR LITTLETON,

Attorneys for Erie Railroad Company, and The Reading Company.

MYERS & O'BRIEN

By: FRANCIS J. MYERS,

Attorneys for The New York Central Railroad Company.

SAUL, EWING, REMICK & SAUL

By: HARRY E. SPROGELL,

Attorneys for Lehigh Valley Railroad Company.

STRADLEY, RONON, STEVENS & YOUNG

By: DANIEL MUNGALL, JR.,

Attorneys for Boston & Maine Railroad, Delaware & Hudson Railroad Corporation, Maine Central Railroad Company, and New York, New Haven & Hartford Railroad Company.

JOHN LEWIS EVANS

Per C. L. CUSHMORE, JR.,

Attorneys for New York, Ontario & Western Railway.

HAROLD B. BORNEMAN,

Attorney for Lehigh & New England Railroad Company.

PLAINTIFFS' REPLY TO DEPENDENTS' COUNTERCLAIM.

First Defense.

1. Plaintiffs admit the allegations of paragraphs 1, 2, 3 and 4 of the Counterclaim, except that plaintiffs deny that the only office of the Eastern Railroad Presidents Conference is at 143 Liberty Street, New York City, New York.

2. Plaintiffs deny each and every allegation of paragraphs 5, 6, 7, 8, 9 and 10 of the Counterclaim.

Second Defense.

3. Defendants' Counterclaim, insofar as it asserts claims prior to June 25, 1952, is barred by the Statute of Limitations, 15 U. S. C. A. Sec. 15b.

Third Defense.

4. Defendants' Counterclaim is barred by Laches.

Fourth Defense.

5. Defendants' Counterclaim fails to state a claim on which relief can be granted.

WHEREFORE, plaintiffs request dismissal of defendants' counterclaim, together with costs.

DILWORTH, PAXSON, KALISH & GREEN

by /s/ AARON M. FINE,
Attorneys for Plaintiffs,
2635 Fidelity-Philadelphia Trust Building, Philadelphia 9, Pa.

July 3, 1956.

EXCERPTS FROM TESTIMONY.

(530) C. COLBURN HARDY, having been duly sworn, was examined and testified as follows:

CROSS-EXAMINATION.

* * *

By Mr. Kohn:

Q. Well, Mr. Hardy, am I correct that your function as an employee of Byoir in connection with this account was that you were responsible for the overall supervision of the account, policy decisions, client relationships, (531) employment of staff personnel, and, in cooperation with Hutchinson, the creation and execution of programs?

A. No, sir.

Q. Would you look at Exhibit P-4B.

Mr. Kohn: Do we have another copy of this?

Mr. Kalodner: No.

By Mr. Kohn:

Q. That is an exhibit which was introduced in evidence during the testimony of Mr. Swinehart, your company then president, now Chairman of the Board.

A. That is right.

Q. "General responsibilities of staff members, Eastern Railroads Transportation Committee. Hardy: Reports to Swinehart and Hammond.

"Responsible for: Overall supervision of account, policy decisions, client relationships, employment of staff personnel, and, in cooperation with Hutchinson, creation and execution of programs."

Is that what it says?

A. Yes. It does.

Q. Is that wrong?

A. It is wrong in the context which was asked me, sir. This memo dates from approximately June, 1952. Prior to that time I was directly responsible to Mr. Girdler on (532) this account.

Q. Well, then at least from June, 1952 it is correct?

A. Yes, sir.

Q. And prior to that you reported directly to Mr. Girdler?

A. Yes, sir.

• • •

(1227) C. COLBURN HARDY, resumed.

By Mr. Kohn:

• • •

(1274) Q. In a sense, it was sort of your finest hour?

A. Well, I wouldn't say so. It might have been at the time.

The Court: Are we having a lawsuit or are we having a little psychological discussion here.

Mr. Kohn: That, sir, apparently is this man's business.

The Court: All right, go ahead.

• • •

(1336) PATRICIA LOCHRIDGE HARTWELL, having been duly sworn, was examined and testified as follows:

CROSS-EXAMINATION.

By Mr. Kohn:

Q. Mrs. Hartwell, your professional name while you were with Byoir was Patricia Lochridge?

A. That is correct.

Q. And you came to Byoir in 1949?

A. Yes.

Q. You became head of the Magazine Department early in 1950?

A. Right.

Q. The Magazine Department was one of the separate component departments of the Byoir organization?

A. Yes.

• • •

(1337) Q. Turning back for a moment to Exhibit P-34, the information stated in that report P-34 with regard to the work of your department is correct, is it not?

A. No, it is not correct.

Q. It is not?

A. No.

Q. What is incorrect about it?

A. Well, to the best of my knowledge—and I believe I really do know all the circumstances—this article had been prepared quite independently of Carl Byoir & Associates and the Magazine Department. It was an independent assignment given by the magazine to Mr. Brownell, and it was not (1338) until the article had actually been scheduled and in fact published that we ever saw it or had anything to do with it.

Afterwards I did see Mr. Brownell, who was an old colleague of mine from our days on the magazine, and we talked about the article after publication, but we had nothing to do with this article prior to publication.

• • •

DIRECT EXAMINATION.

By Mr. Price:

• • •

(1381) Q. Did you have things in your Research Department that were similar to those in the New York Public Library and other public libraries?

A. Oh, yes. I think they were perhaps more conveniently arranged, and we had almost, I would say, a duplicate of anything that you would find in either the New York Public Library or perhaps the New York Times Morgue.

Q. Were they original source materials or were they digests of such materials?

A. Oh, no, they were the original source material.

Q. Such as——

A. Well——

Q. Not a complete list, but just give me two or three examples.

A. Well, it would range from anything from a collection of speeches that had been given at a scientific meeting of engineers to, well, the files of the Brookings Institution, to the collection of articles that might have been printed in various old municipal publications dealing with road problems.

We went to the "Readers Guide" and tried to get all the expert authority that we could get and then ordered reprints or photostats of this type of material. (1382) They were reports, as I say, by the Bureau of Public Roads. They were reports by the tire companies, by the oil companies, by the truck manufacturing companies, by the ICC. I mean almost anything.

Q. Well, after you got this railroad account, was the kind of material you had representative of the railroads' point of view alone or was it general? Did it have the truckers' point of view as well as the railroads' point of view?

Mr. Kohn: She is an intelligent woman, Mr. Price. You don't have to lead her.

Mr. Price. I think she is, too. That is why I asked her the question, so she can tell us the kind of material she had.

A. Yes, I believe we had everything that had been published on either side of the subject.

By Mr. Price:

Q. What is the "Readers Guide"?

A. The "Readers Guide to Periodical Literature" is a volume which is put out monthly and then again put out

annually, which lists, under certain classifications, everything that has been written on a given subject. It is useful in helping you not to miss anything that is coming out, and it is also useful for you to see. You (1383) can check the guide, and if you see that magazine X hasn't published something on the subject of roads for five years, you think, well, perhaps the editor might then be interested because he hadn't covered the subject.

Q. Did you have any articles or material from technical experts writing on this subject as well?

A. Oh, yes. As I say, from the highway officials of the various states, from the society in Washington, whose headquarters were in Washington, from, as I say, oil companies, from every source.

Q. Now, were these data that you had available to anybody except your own staff?

A. I beg your pardon?

Q. Did you make this material available to anybody outside the Byoir organization?

A. Oh, yes, it was available to anyone who was interested in the subject.

• • •

(1901) RAYMOND J. LITTLEFIELD, having been duly sworn, was examined and testified as follows:

CROSS-EXAMINATION.

By Mr. Kohn:

Q. Mr. Littlefield, you were chairman of the Research Committee of the Competitive Transportation Committee of the ERPC for several years?

A. Yes, sir.

Q. And you were also associated with the Pennsylvania Railroad?

A. Yes, sir.

Q. And you are at the present time manager of property taxes of the Pennsylvania Railroad?

A. That's correct.

Q. And you were previously the general tax agent for the Pennsylvania Railroad?

• • •

(1977) Q. 10: "General Motors is thoroughly interested in cooperating with railroad industry on taking long-haul trucks off highways and putting them on flat cars, or some (1978) other method."

And you so reported to Mr. Patchell?

A. Yes, sir.

• • •

DIRECT EXAMINATION.

(2078) By Mr. Price:

Q. Paragraph No. 10.

A. Yes, sir.

Q. That relates to General Motors being interested in cooperating with taking long-haul trucks off highways and putting them on flat cars, or some other method. What kind of other method did you have in mind there?

A. At that time there was talk of developing a unit that could run both on rails and highways. There was talk of developing the container idea. In other words, instead of transporting the whole truck chassis on a flat car, simply lift the body off the wheels and put it on a flat (2079) car.

Q. Was the method, whatever the method might be, connected with carriage on railroad cars of some kind?

A. Yes, sir.

Q. What is the present form of carriage of that character, and what is it called?

A. Piggy-back has developed very rapidly in the last two years. There is also the container idea. It has not developed nearly as fast, but it is developing. But the piggy-bank, which means taking the trailer on the flat car and hauling it from station to station by rail, has developed very fast in the last two years, and at least 15 railroads are now engaged in so-called piggy-back service.

• • •

(2103) Q. Now, with reference to your comments on the speech, will you turn to paragraph 4 and read that.

A. "By giving the shipper the benefit of the coordinated service—long-haul by rail and short-haul by truck—it makes the service competitive with the over-the-road truck service. Otherwise, there would be many more long-haul trucks on public highways today."

(2104) Q. Now, with reference to that comment "it makes the service competitive with the over-the-road truck service," is over-the-road truck service what is known as long-haul truck service?

A. Yes, sir.

Q. Then if you had this coordinated service that you are talking about, would there still be long-haul truck service to be competitive with?

A. Oh, yes, sir, there would be some, but by improving the service to the shipper in this manner, coordinating long-haul by rail and short-haul by truck, we were able to save in many cases 48 hours.

Q. By "we" whom do you mean?

A. The Pennsylvania Railroad.

Q. All right.

A. Was able to speed up the service by 24, and in many cases 48 hours, and thereby give just as good service as the long-haul truck. And we knew that if we didn't do that and used the truck to supplement rail service, the long-haul truck was going to continue to take much more business away from the railroad.

Q. Paragraph 5.

A. "Long-haul by rail plus short-haul by truck (2105) effects economies to the railroads. Otherwise, the railroads would have to charge rates on merchandise traffic that would drive much more of the business to the over-the-road trucks. This has been demonstrated time and time again at our hearings before the I. C. C.

for the right to operate truck routes in lieu of local freight trains in short-haul service."

Q. Does that refer to the same competitive situation you speak about?

A. Yes, sir.

Q. Will you turn to the next page, the second full paragraph.

A. "One of the reasons why one large railroad went out of the long-haul, over-the-road trucking business—it would not resort to illegal use of public highways to compete with other long-haul trucks."

Q. What does that refer to?

A. That refers to the activities of the Pennsylvania Railroad. The Pennsylvania was the first railroad to apply to the Interstate Commerce Commission for the right to operate long-haul trucks on public highways. It operated long-haul trucks strictly as truck lines and no relation to the railroad for a matter of two or three (2106) years, and it went out of business because—it discontinued those lines because it would not resort to the illegal practices that were prevalent on public highways at that time.

Q. What illegal practices do you refer to?

A. Overloading, ignoring the safety provisions of the Motor Carrier Act, working men longer hours than were permitted by the Motor Carrier Act, and other violations of the Motor Carrier Act that was passed just prior to this period, passed in 1935.

* * *

(2150) PATRICIA LOCHRIDGE HARTWELL, recalled.

DIRECT EXAMINATION.

By Mr. Price:

* * *

(2156) Q. Now, can you tell me what connection Byoir had with that article and its preparation?

A. We had written an outline of an article "Revolution On The Roads" which we presented to one of the junior editors of "Harper's" with the suggestion that if the magazine liked the idea and wanted such an article we would be happy to work with them or work with a writer of their choosing.

At that time I spoke to a Mr. Eric Larabee on their staff. Mr. Larabee was interested in the material but it happened that they already had an article in the works and had assigned Mr. Myron Stearns to this article.

I had known Mr. Stearns for a number of years. I got in touch with Mr. Stearns, talked to him about the assignment. He returned to our office and worked one or two days with our files and then returned to his home in Connecticut, where he drafted the article and turned it in to the editors of "Harper's" Magazine.

Q. This staff-written article which you refer to on page 3 of P-34, was that the one that you had submitted as (2157) a suggestion to "Harper's"?

A. That's correct, yes.

Q. Was that a final draft of an article or was it an outline or was it less formal than the completed article was intended to be?

A. Oh, it was a long outline. I would say it probably ran fifteen hundred, two thousand words, a fairly detailed presentation of the story but not a completed manuscript.

Q. Did Mr. Stearns use that in any way, so far as you could tell?

A. No. Mr. Stearns I don't think ever saw that.

Q. Then the files that you describe as having been made available to Mr. Stearns were the Byoir files?

A. That is correct, yes.

Q. In your office in New York?

A. Yes.

Q. Did you give him any editorial material, or did you simply turn him loose in the research files?

A. No, we turned him loose. The only material that I did give him was a memo of an interview that I had conducted with Commissioner MacDonald and Mr. Fairbanks, of some weeks previously, in Washington. I gave him my notes on that.

• • •

EXCERPT FROM HEARING OF NOVEMBER 16, 1956 BEFORE HON. THOMAS J. CLARY, J. (IN CHAMBERS).

(2766) The Court: I don't think that we are going to have too much trouble in either court, because, fundamentally, as nearly as I can see, the facts as such are not controverted.

Mr. Price: Essentially, I think that it is true.

(2879) HAROLD A. THOMSON, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Price:

Q. Mr. Thomson, did you give us your full name?

A. Yes, sir, I did.

Q. Are you also known as Cappy Thomson in certain circles?

A. That is a nickname.

Q. Will you give us your background and experience going back to your educational experience in college.

A. Basically civil engineering. High school, prep school, University of Pennsylvania. Registered professional engineer in Pennsylvania since 1923.

Q. When did you graduate from college?

A. 1913, C. E.

Q. Was that where you got your engineering degree?

A. Right.

Q. Or did that come later?

A. That came later. The registration of 1923 is the qualification.

Q. After college what was your business or professional experience?

A. Engineering. Pennsylvania State Highway Department (2880) until 1923.

Q. When did you go with the Highway Department?

A. 1913.

Q. So you were there ten years?

A. Yes.

Q. And thereafter?

A. Private engineering from 1923 on. Became Secretary Pennsylvania State Association of Township Supervisors, 1926. Held that office to date. In the insurance business since 1935 to date.

* * *

(2891) Q. What has the position of the township supervisors been with reference to weights of motor vehicles? Has it had any official position?

A. Well, as long as I can remember, the general attitude has been one of opposition to any increase in the legal weights permitted over our roads and bridges, and for a long time, advocated a decrease.

Q. When was the first formal action taken by the supervisors of which you were aware?

A. Formal action?

(2892) Q. Yes.

A. The first formal action, I believe, was in 1933.

Q. And what form did that take?

A. That took the form of a state convention resolution adopted at the state convention unanimously at that time.

Q. Have you a copy of that resolution with you?

A. I have.

Q. Would you read it, please?

A. Resolution No. 8, February 14-15, 1933, at Harrisburg, Pa.

"Resolution #8: Whereas all of the highways of our State, except a few of the heaviest and most expensive construction, are being seriously injured by heavy truck traffic; therefore be it resolved that we urge legislation reducing the present excessive gross weight now allowed by law to a more reasonable and less destructive limit."

Quote, Chairman Ferringer—Mr. Ferringer was Chairman of the Resolutions Committee—"You will notice we do not suggest any weight. That is for the engineers to figure out. We simply ask a reduction. (Upon Chairman Ferringer's motion to adopt, this final resolution passed unanimously.)"

Q. What was the next formal action that the supervisors (2893) took in respect of motor vehicle weights?

A. I will have to refer to the——

Q. Was it 1948?

A. I believe it was.

Q. I suggest you look at page 7 there, May, 1948.

A. It is continued on 15, I believe.

Yes. 1948.

Q. On what occasion was this resolution adopted?

A. This is another resolution of the state convention of Township Supervisors.

Q. Adopted when?

A. February 13, 1948.

Q. And will you read the resolution?

A. (Reading):

"Whereas the legislature seems to be inclined to listen favorably to the demands of the trucking interests and have repeatedly granted them permission to carry heavier and still heavier loads; and whereas the

present permissible load is greater than 90 per cent of our improved roads and bridges can carry and is seriously damaging many rigid and semirigid types of roads and bridges; and whereas enormous sums of money must be spent to repair this truck-caused damage and to build the roads and bridges strong enough (2894) to stand up under such punishment; therefore, be it resolved that our association is opposed to any further increase in the permissible weight of truck loads."

Q. You spoke about this being the state meeting or annual convention. Will you just tell us what that meeting is? Is it an annual meeting or is it held more often than annually?

A. No. It is an annual convention.

(2895) Q. And who attends the Annual Convention?

A. Delegates elected annually from every County Association in the state.

Q. Then approximately how many of such delegates are there?

A. About 200.

Q. And each county has a separate association?

A. That's right.

Q. What does the County Association consist of?

A. The County Association consists of all of the township officials in that respective county, the township supervisors, secretaries, auditors, assessors, tax collectors, solicitors, and engineers.

Q. They elect delegates to the State Association?

A. Correct.

Q. Is that based on a per capita formula or how is the number of delegates from each county determined?

A. The number of delegates from each county is based upon the number of townships in that county, with one delegate being elected for each ten townships or fraction thereof.

Q. After 1948 what was the next formal action that was taken in this regard?

A. I beg your pardon; I didn't get that question.

Q. The next formal action, and I refer you to 1949, April, (2896) 1949. Page 25 may be the place where it is reported in your book.

A. This is a transcription of the proceedings of the State Convention of February 11, 1949:

"Resolution No. 7. Resolved that we oppose any increase in the legal gross weight of trucks permitted on the roads and bridges in Pennsylvania.

"Thereupon, upon motion duly made and seconded, said motion was carried unanimously."

Q. In 1950 was there any formal action taken? Look at the April, 1950, issue, Page 41.

A. This is a transcription of the State Convention of February 7, 1950, Philadelphia.

"Resolution 6. Whereas the huge freight trucks traveling the highways of Pennsylvania continue to cause excessive damage to our roads and streets, therefore be it resolved that we continue our opposition to any increase in existing weight limits of trucks and demand a decrease in the present excess weights when and where such trucks are to be used on township roads; and be it further resolved that we request from both state and local authorities a more strict enforcement of existing weight limits.

(2897) "Motion for adoption duly made, seconded, and carried."

Q. Was there any such action taken in 1951? Refer to the May, 1951, issue, Page 29.

A. This is the proceedings of the State Convention of February 12-13, 1951, Pittsburgh, Pennsylvania:

"Resolution No. 2. Whereas the huge freight trucks traveling the highways of Pennsylvania con-

tinue to cause excessive damage to our roads and streets, therefore be it resolved that we continue our opposition to any increase in existing weight limits of trucks and demand a decrease in the present excessive weights when and where such trucks are to be used on township roads; and be it further resolved that we must request from both state and local authorities a more strict enforcement of existing weight limits.

"Unanimously adopted without remarks."

Q. In 1952 was there any such action taken, March, 1952, Page 52.

A. This is the proceedings of the Convention of February 4 and 5, 1952, Philadelphia, Pa.:

"Resolution 8. That we continue our opposition to any increase in truck weights in Pennsylvania and (2898) express our thanks and appreciation to Governor Fine for his courageous act in vetoing Senate Bill 615 of the 1951 Session.

"I move the resolution be adopted.

"Motion seconded and carried."

Do you wish the rest of the proceeding on that?

Q. That is the end of that resolution?

A. That is the end of the resolution. There were comments on it.

Q. Then in 1953 was there any formal action taken, March, 1953, Page 54.

A. This is from the 1953 Convention:

"No. 3, Mr. Doyle. Whereas the condition of our roads and bridges showing constantly increasing strain and poor condition because of the increasing number and weights of big trucks traveling these roads and bridges; and whereas we do not feel that these freight trucks are presently paying their fair share of the road construction and maintenance on either state or local level in Pennsylvania; therefore be it resolved that we

call for strict enforcement of existing weight limits on these trucks and no increase in the legal weight of these trucks; and be it further resolved that legislation should be passed to provide (2899) these trucks shall pay a fair share of their cost of road expense in Pennsylvania by having the 1953 Legislature enact a weight-distance tax on these large trucks similar to existing law in New York State, with the proceeds from this tax being divided proportionately between the State Highway Department and the local governments of Pennsylvania.

"I move this resolution be adopted, Mr. Chairman.

"Thereupon above resolution was seconded by Glen Jacobs, Adams County.

"There being no questions, all those in favor signify aye; contrary no.

"So ordered."

* * *

(2941) HAROLD R. PROWELL, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Price:

Q. Mr. Prowell, what is your occupation, sir?

A. I am a lawyer.

Q. And have been since when?

A. 1932.

Q. Where do you practice?

A. Dauphin County, Pennsylvania.

Q. What if any contact have you with the Pennsylvania Motor Federation?

A. General counsel for the past eighteen years.

(2942) Q. Have you any other association with it or any other position with it than counsel?

A. Yes, sir. I am vice-chairman of the Legislative Committee.

Q. And have been for how long?

A. I would say for five or six years.

Q. Have you any other committee connections or assignments?

A. I am vice-president of the Motor Club of Harrisburg, but in the state organization I have no official title other than general counsel and then as vice-chairman of the Legislative Committee. I am frequently appointed to assist other committees, but they are not standing appointments.

* * *

(2943) A. The Pennsylvania Motor Federation is the state organization of AAA Motor Clubs in the Commonwealth.

Q. How is it connected with the AAA organization?

A. The AAA, the American Automobile Association, is the national association. The Pennsylvania Motor Federation is the Pennsylvania State Organization comprising 57 Motor Clubs in the Commonwealth of Pennsylvania.

Q. Is it a corporation or a voluntary association or what?

A. It is a non-profit corporation.

Q. And the members are local clubs.

Q. The members are the local clubs and the members of the local clubs.

Q. How long have you been active here with the Pennsylvania Motor Federation in legislative matters?

A. Ten years.

Q. Are you familiar with the position that the Pennsylvania Motor Federation has taken in respect of motor vehicle weights, particularly truck weights?

A. I am.

Q. Will you give us the history of the Pennsylvania Motor Federation's position in that regard since you have been familiar with it?

A. In 1941 at the annual meeting there was a comprehensive (2944) resolution adopted.

Q. Will you read that resolution? Do you have a copy over there?

A. I have.

"Whereas there has been presented to the Senate Committee on Highways House Bill 690, now known and designated as Senate Bill 472, a bill which, if enacted into law, will permit trucks moving over our highways to increase their maximum load limits from 39,000 pounds to 50,000 pounds, an increase of five and a half tons; and whereas it is deemed advisable to go on record as opposing such an increase in size of said motor vehicles, the Pennsylvania Motor Federation and its 61 affiliated AAA Clubs in Pennsylvania oppose the passage of Senate Bill 472 for the following reasons:

"1. That the increase in weight would aggravate the existing traffic problems and hazards incident thereto.

"2. That the present highways, bridges, and culverts, both on the open highway and in the city and borough limits, were not designed to carry with safety an unreasonable and ever increasing weight limit of trucks.

(2945) "3. That the necessary increase in the length and/or width of said trucks would create an additional hazard to the traveling public seeking to pass on now already crowded highways.

"4. That the increase in length and/or width of the trucks would necessarily tend to slow up the normal movement of traffic, particularly in the mountainous regions of this great Commonwealth.

"5. That until such time as the trucking interests construct and maintain their own highways, the tend-

ency should be toward a reduction from the present limits, rather than an increase.

"6. That with the cost of construction and maintenance of our highways reaching a prohibitive stage, and with municipal thoroughfares and bridges rapidly breaking down under existing weights, the taxpayers of this great Commonwealth, in cooperation with all municipal and country governing bodies, should unite and take steps which will result in a drastic reduction in the present size and weight of trucks moving over our highways.

"Therefore be it resolved that the Pennsylvania Motor Federation and its affiliated AAA Clubs in (2946) Pennsylvania, numbering 61, go on record as unalterably opposed to the passage of Senate Bill 472 or any compromise bill which would permit any increase in load limits; and we hereby direct the secretary of this Association to notify all members of the Senate Committee on Highways, as well as all other members of the Senate, as to the contents and reasons of this resolution; and further that this resolution be spread upon the minutes of this meeting."

Q. Was the policy outlined in that resolution ever modified later on or changed?

A. Very slightly.

Q. In what respect?

A. Except during the war period, when, as a national war emergency, the President asked that weight limits be increased, and we went along with that as a war measure. There was no change until about 1952, when there was a slight modification. However, in 1948, at our annual meeting, we passed another resolution which in effect——

Q. Will you read that resolution.

A. Yes.

"Whereas it is recognized that the use of public highways by trucks and buses in common with (2947)

private passenger vehicles has raised serious problems in the fields of engineering, policing, construction and maintenance of highways, and especially in the field of safety; and whereas these problems are not being solved adequately and satisfactorily by such means as we have been employing to date; and whereas the trucking and bus industries have within their own ranks the ability, capacity, and opportunity to solve many of these problems; now therefore be it

"RESOLVED that we urge the trucking and bus industries to make greater and more adequate efforts to solve these problems, particularly those problems arising out of truck and bus sizes, weights, speeds, and performance, to the end that the private passenger vehicles may more safely, conveniently, and comfortably utilize the public highways, and that the trucks and buses may utilize highways with a minimum damage to the highways, minimum threat to the safety of other vehicles lawfully using said highways, and minimum annoyance to private passenger vehicles."

Q. When was that adopted?

A. That was adopted at the Annual Meeting in 1948.

Q. Were there any other resolutions adopted subsequently (2948) on this general subject?

A. In 1950 at our Annual Meeting there was a resolution adopted:

"Whereas there appears to be no authoritative and impartial investigation or research on the question of damage caused to highways by heavy trucks, it is recommended that the American Automobile Association immediately cause such research and investigation to be made, to the end that an intelligent and just policy may be adopted by this Federation."

Q. Was such procedure followed as was recommended by that resolution?

A. I cannot answer that question except by saying that in December of the same year the Executive Committee decided to appoint a committee of the Pennsylvania Motor Federation to do just about the same thing.

Q. Whose Executive Committee?

A. That is the Pennsylvania Motor Federation Executive Committee. I have a transcript of our minutes of that meeting. Would you like me to——

Q. Before you get to those, did the National Association do anything in respect to your request?

A. As I said, I can't answer that.

Q. Did you know of any?

(2949) A. No, sir.

Q. All right, then, your Executive Committee took what action in December of 1950?

A. I will read a transcript of the minutes.

"It was the opinion of several members of the Committee that the PMF"—that is the Pennsylvania Motor Federation—"should take a definite stand as to whether they did or did not approve increasing the present truck weights. It was also pointed out that since we represent the motoring public it would not be to our advantage to recommend an increase in truck weights at this time, since the public definitely is opposed to this action. Some members of the Committee also felt that our present system is not able to support increased weights.

"On motion of Kreisle and Firman it was recommended that a committee be appointed to study the subject of truck weights from every angle, and it was also recommended that the Committee, if necessary, procure engineering assistance on the problem, and until such time as the study was concluded, the Federation be opposed to any change in truck weights at this time."

Q. What if anything was done pursuant to that resolution?

(2950) A. I think that at that time the Maryland tests were being planned or may have been underway. In any event, it was the duty of this Committee to follow the Maryland tests to determine, first of all, whether they would be authoritative tests, whether they were fair tests, and whether we could accept the results at their face value, and, of course, after they were completed, to evaluate the conclusions.

Q. Was there any other formal action taken by the Association or by the Executive Committee?

A. In July of 1951 the Executive Committee minutes contained the following reference:

> "Senate Bill 615. The Big Truck Bill, as you know, passed the Senate by a majority of 31 to 18. It is presently in the House Committee on Motor Vehicles. We have asked all of our clubs to poll the members of the Legislature to see just how they stand. I am told that the House of Representatives is about equally divided, with a fair chance of the bill passing as the situation now stands. The Executive Committee, as you will remember, went on record a year ago opposing any further increase in gross weights until the Maryland tests have been completed and full technical knowledge was available (2951) as to just how much our roads would stand."

Q. What did the Pennsylvania Motor Federation do in respect to asking action from the various local associations in the line of this resolution?

A. I believe the State Association sends out a legislative bulletin, which is a news weekly, telling what goes on in the Legislature. In that bulletin they would ask from time to time the clubs to take some action, contact their legislators on certain bills, and I believe that was done with reference to the truck bill at or about this time.

Q. Was there any other resolution that the Association adopted on this subject?

A. Chronologically, sir, the next development was the Governor's hearing, and then in 1953, June, at our Annual Meeting the Legislative Committee made a report recommending, and then the Annual Meeting approved, the position of discouraging any additional increase in truck weights that do not have the approval of the Highway Department, to make certain that our highway system will stand additional loads, and until we have convincing proof that additional weights will not react disastrously on our present system.

* * * * *

(2969) JOAB K. MAHOOD, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Price:

Q. Mr. Mahood, what is your occupation?

A. Well, at the present time, I am Chairman of the Pennsylvania Milk Control Commission.

Q. Would you give us your general background and experience?

A. I was born on a dairy farm in Bradford County. My formal education ceased at graduation from high school. I entered the dairy business at that time, or very soon afterwards, and I still have some dairy farms in Bradford County.

I have operated a small insurance agency since the early 1920's. I was closely connected with the Grange since 1910. This insurance agency, which I operate, is also connected with the Grange. I was a Deputy in the Grange for many years, and in 1943 I was elected Secretary of the Pennsylvania State Grange and Managing Editor of the Grange News, and legislative representative of the State Grange at the same time, which positions I held until I was ap-

pointed to the Milk Control Commission (2970) on March 2, 1952.

• • •

(2973) Q. Now, the main purpose of the Grange organization is what?

A. To promote the welfare of agriculture, in particular.

Q. And what if any interest have they shown in roads?

A. Well, probably no subject has been discussed more often in Grange circles than roads. I have been a member of the organization since 1910, and I recall no subject that has been of greater importance to the Grange than roads, and particularly rural roads and what we call farm-to-market roads, the secondary system in Pennsylvania.

Q. Farm-to-market roads are in general what?

A. Well, they are the feeder roads which come into the (2974) main arteries of travel, the roads by which the farmer takes his produce to market, and over which most of his travel occurs.

Q. There has been some talk in this case about Pinchot Roads. Can you describe those in terms of the type of roads we are speaking of?

A. Well, Pinchot Roads are, as we term them, a part of that rural system. They are a part of a great campaign, or resulted from a great campaign to get the farmer out of the mud, back in the twenties, in which the Grange had a prominent part, and they have been a great benefit to the farm people of Pennsylvania. It has always been the ambition of the Grange to have more roads of that type, and a great deal of our effort has been spent in securing roads of that type to aid the farmers.

Q. And do they take any action with respect to the bridges on such roads?

A. Not in particular, except that we were quite concerned that the 'ouldn't be destroyed by heavy loads.

Q. And did you take any active part in respect to taxes that were levied to pay for such roads?

A. Yes.

Q. How long has the Grange been active in that field?
(2975) A. Well, much longer than I have any recollection.

Q. When were you first aware of any action taken by the Grange in respect of the motor vehicle weights?

A. Well, I couldn't say exactly when. As I have visited various granges throughout the state, that was always, or for many years, a subject of a great deal of comment. The first formal declaration that I recall on the state level was in either '49 or '50.

Q. Was that the first time that you recall? You say it was '49 or '50?

A. That is the first time that I recall a formal resolution being adopted by the State Grange. There had been a great deal of comment about it over a period of years previous to that.

Q. What action was taken in, say, '49 or '49-'50, and by whom?

A. The delegates of the State Grange voted to oppose any bill increasing the maximum weights of trucks.

Q. Now, how often does the State Grange meet?

A. Once a year.

Q. And who are the delegates? I do not mean their personalities, but how are they selected?

A. The Masters of the local Granges and their wives, if
(2976) any, and the Masters of the Pomona Granges at the county level and their wives are delegates to the State Convention.

Q. And that comprises the membership of the State Convention, does it?

A. That is correct.

Q. Are the proceedings of the State Convention reported or recorded in any way?

A. Yes.

Q. Do those proceedings contain the resolutions such as you have described?

A. They do.

Q. If I showed you that, would you be able to tell us what the resolution was that you referred to?

A. Yes.

Q. Can you tell me what if any resolution was adopted in 1949?

A. In 1949, the resolution referred in particular to coal truck load limits. It reads as follows:

"Whereas, Coal Trucks are loading in such a way as to cause injury to individuals and damage to vehicles and other property when coal falls from the trucks,

"Therefore, be it resolved, That Allegheny (2977) County Pomona Grange, No. 42, petition the Pennsylvania State Grange to ask the Commonwealth of Pennsylvania to enforce present load limits and regulations, and to enact further legislation that would eliminate the above-mentioned dangerous condition."

The committee approved the resolution and the delegates also approved it.

Q. What if any resolution was adopted in 1950?

A. In 1950, there were resolutions from three different counties, the County of Mercer, the County of Tioga, and the County of Potter County, which read:

"Whereas, The legislatures of the several States have rightly enacted laws limiting the weight of loads that may legally be transported on our highways, and

"Whereas, Overloading has become a common practice with certain types of for-hire carriers who are more interested in profits than in obeying the law, and

"Whereas, These violations on the part of a minority of carriers are bringing the motor transport industry into disrepute, and

"Whereas, Thomas H. MacDonald, Commissioner (2978) of the United States Public Roads Administration, has said: 'Specifically, we are overloading our

highways in their traffic volume capacity and their structural capacity . . . and the results are so costly both to individuals and to the public that they total a disgraceful and extravagant waste in the Nation's true economy,'

"Therefore, be it resolved, That the Pennsylvania State Grange go on record as being in favor of holding fast to the present weight limit of 45,000 pounds for trucks and trailers and that the law be strictly enforced."

That action was approved by the delegate body.

Q. And then in 1951?

By the way, would you tell me at what time of year those meetings were held in 1949 and 1950 at which these resolutions were adopted?

A. They were held each year in October.

In 1951, the following resolution was adopted:

"Whereas, Pennsylvania has a larger mileage of state highways than all the six New England States combined, together with New York, New Jersey, Delaware (2979) and Maryland; and

"Whereas, this system of highways constitutes one of the chief physical assets of the State, representing an investment of more than two billion dollars, which deserve to be safeguarded, and

"Whereas, there is pending before the State Senate for concurrence in a few minor House amendments a measure, S. 615, commonly known as the Big Truck Bill, which we consider contrary to the public interest.

"Therefore, be it resolved, That we respectfully ask Governor Fine to veto this bill for the following reasons, if or when it reaches his desk:

"1. It would legalize weight limits for trucks and trailers at higher levels than our primary system of roads was built to carry.

"2. There are literally hundreds of bridges on our State highway system that are posted for lower weight limits than those prescribed in the pending bill.

"3. Since it is a well-known fact that heavy trucks do not always operate on our primary (2980) system of highways, approval of this measure would undoubtedly lead to the destruction of a large part of the mileage of the so-called Pinchot Roads of the state, which have been such a boon to the residents of the rural districts.

"4. Due to inflated costs and the prevailing national emergency it is impossible to give as much attention to our roads as they deserve. It is the part of wisdom, therefore, to carefully safeguard the roads we already have."

This resolution was adopted by the delegate body.

Q. What distribution was given to those resolutions after they were adopted? What publicity was given to them?

A. They were given to the press at that particular time. They were then printed in this Journal of Proceedings, which goes to each delegate to the convention.

Q. Was any of those resolutions influenced or prompted in any way by any representative of the railroads or the Byoir organization?

Mr. Kohn: Objected to.

The Court: Overruled.

The Witness: No.

(3033) BEATTY H. DIMIT, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Price:

Q. Dr. Dimit, what is your present occupation?

A. At the present time I am connected with the—retired as a college professor and have just left the State Grange as its master. I am now an officer in the National Grange as priest-analyst. That corresponds to secretary.

(3035) Q. Are you familiar with the attitude of the Pennsylvania State Grange toward size and weight limits for motor vehicles, particularly large trucks?

A. I am, having been connected as the lecturer and as the master and as a member of the Legislative Committee over those years.

Q. When did the Grange first take any public position with reference to truck weights?

A. I believe 1949 or 1950. 1951 was the year that I was elected, and that, I believe, was the time that there was a definite resolution.

Q. The year that you were elected what?

A. Elected master.

(3036) Q. That resolution I think was referred to yesterday by Mr. Mahood, but prior to that time was there any discussion or consideration of the subject in the Pennsylvania State Grange?

A. Yes, there had been, but several years preceding that. That was the period while I was lecturer.

Q. And 1950 was the first year when there was any formal resolution adopted, so far as you know?

A. Where they put a definite weight.

Q. What was the position of the Grange with reference to trucks?

Mr. Kohn: That is objected to, sir.

Q. From 1949 on.

Mr. Kohn: That is likewise objected to.

The Court: I will overrule it.

A. The position there was that while we were not opposed to trucks, since a great many of our farmers have trucks, yet we realized that the heavy weight was destroying our roads. We felt that they were destroying the roads, and because of that it would require an extra amount of funds to replace those roads, and we were interested in our country roads as well as the main highways and therefore felt that there should be an extra return of money and a saving of our roads until others could be constructed.

(3037) By Mr. Price:

Q. What is the basis of the Grange's interest in this matter of roads? How did they get involved in it?

A. Well, the Grange has always been interested in the farm-to-market roads and the roads as a whole. They have had that position, and also the distribution of the funds that were appropriated, as to how they should be used and distributed.

Q. Did your experience and duties as lecturer involve the subject at all?

A. It did, because as the educational officers we were concerned with the preservation of our highways and with the taxes that had to support those.

Q. Was that a subject of your discussion, subject of your lectures, for any period of time?

A. Yes.

Q. When did you first begin to lecture on this subject?

A. Well, that would be ten years ago. When I was lecturer I traveled over the State.

Q. On behalf of the Grange or as a teacher?

A. That was in behalf of the Grange.

• • •

(3046) Q. Will you look at D-56, please, Mr. Dimit. Before turning to D-56, you said that you published that photograph in the "Grange News." In what connection was that?

A. Showing the destruction that was being written by overloading.

Q. But was it just the picture or was there any article?

A. We ran the description such as is given in the newspaper.

Q. Do you know who wrote the article that appeared in the "Grange News"? Was that you or somebody else?

A. I wrote the article.

Q. You wrote the article. All right. What was your connection with the "Grange News" during this period that you were Master, your official title?

A. I was editor-in-chief.

Q. All right. Now, turning to D-56, do you recognize that editorial?

(3047) A. As one that I wrote.

Q. You wrote that yourself?

A. Yes, sir.

Q. The note at the bottom shows it was a reprint from the March, 1951, issue of the "Grange News"?

A. That is right.

Q. Did you write that independently of any information obtained from Byoir or from the railroads?

A. Yes, sir.

Q. Will you turn to D-55. That is entitled, "Highway Use Tax," and also shows it was a reprint of an editorial from the June, 1951 "Grange News." Do you know anything about that editorial?

A. Yes, sir. I wrote that.

Q. And did you have any assistance from the railroads or from Byoir or anybody from Byoir in writing that editorial?

A. Not that I recall.

Q. Do you remember the basis of the figures, the source of the figures that you got there?

A. The basis of the figures were taken from the Department of Highways statistics.

(3048) Q. You got them from the Highway Department, Pennsylvania Department of Highways?

A. Pennsylvania Department of Highways.

Mr. Price: Will you mark that D-60.

(Reprint of an article, "Should Pennsylvania Have a Highway Use Tax," reprinted from the May, 1951, "Pennsylvania Grange News," was marked Exhibit D-60 for identification.)

By Mr. Price:

Q. I show you a reprint of an article entitled, "Should Pennsylvania Have a Highway Use Tax," reprinted from the May, 1951, "Pennsylvania Grange News," with your name at the top, and ask you if you know anything about that article.

A. This is also one of my articles.

Q. You wrote that?

A. Yes, sir.

Q. And in the preparation of that article did you get any assistance from Byoir or from the railroads?

A. There might have been some statistics supplied by them, some information, because we were gathering information from all sources.

Q. When was that article prepared?

(3049) A. This would have to be prepared in April because our deadline is April 20.

Q. Of 1951?

A. Of 1951.

Q. And that appeared in the May issue of the "News"?

A. Right.

Q. But that was your article that you wrote, you say?

A. Yes, sir.

• • •

(3105) HERBERT S. FAIRBANK, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Rhoads:

Q. Mr. Fairbank, you have given the Court your full name.

Did you all hear it?

What is your name?

A. Herbert S. Fairbank.

Q. Where do you live, Mr. Fairbank?

A. I live in Baltimore.

(3106) Q. Where do you live in Baltimore?

A. At 2041 East 32nd Street.

Q. How long have you been a resident of Baltimore?

A. Well, I have been a resident all my life, except as I have been away occasionally.

Q. What is your present employment, Mr. Fairbank?

A. I am retired.

Q. And how long have you been retired?

A. Since 1955.

Q. Prior to that retirement, immediately preceding that, what was your business or profession?

A. I was an engineer, and I was Deputy Commissioner of the Bureau of Public Roads.

Q. The Bureau of Public Roads in Washington: is that correct?

A. Yes, United States Bureau.

• • •

(3256) CROSS-EXAMINATION.

• • •

(3277) By The Court:

Q. What did you say, then?

A. I testified that the——

Q. You said that it could be cut without doing what? I have paraphrased your testimony to bring out a con-

clusion. Now, just exactly what did you testify to when you said that the film was cut? Put it in your language again; then I will draw perhaps another conclusion.

A. I said that the film, shortened as we had agreed that it could be shortened and had authorized the Byron Company to shorten it, would have caused no distortion of the intent and purposes of the full film.

* * *

(3368) CLINTON B. F. BRILL, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Rhoads:

Q. Mr. Brill, would you be good enough to keep your voice up so that everyone over here toward the right of my table can hear you?

Where do you live, Mr. Brill?

A. 210 East 73rd Street, New York City.

Q. And what is your business or profession?

A. I am an architect.

Q. And how long have you been an architect?

A. 27 years.

Q. Now, just give me an idea, please, of your educational background, briefly.

A. I was graduated from the Bloomsburg, Pennsylvania, State Teachers College in 1912. I attended Trinity College in Hartford, Connecticut, with the class of 1919, and was graduated with the degree of Bachelor of Science. I subsequently attended the Massachusetts Institute of Technology, taking a special course which included subjects in both architecture and engineering. I received a certificate in 1922.

Q. Now, with what organization or firm are you presently connected?

(3369) A. DeLeuw, Cather & Brill.

Q. And how long have you been connected with that firm?

A. Since its formation in 1951.

Q. And what is your particular association with the firm of DeLeuw, Cather & Brill?

A. I am the managing partner.

Q. And where are their offices?

A. At New York City, 202 East 44th Street.

Q. Now, what if any connection does DeLeuw, Cather & Brill have with DeLeuw, Cather & Company of Chicago?

A. They are affiliated concerns.

Q. Now, in what type of activity does the firm of which you are managing partner operate?

A. We are consulting engineers and architects. Our activities cover a very broad area of general engineering practice with special emphasis on the field of transportation.

Q. And when you say "emphasis on the field of transportation," what do you mean?

A. I mean practically all phases of the field of transportation.

Q. And what if any connection does the operation of your firm have to do with the construction of highways?

A. Well, we have had very substantial experience. I suppose it comprises the vast majority of our activities over (3370) the past five years.

• • •

(3372) Mr. Rhoads: If Your Honor pleases, anticipating the possibility that Your Honor very naturally would be interested in precisely the matter that we would produce by this witness, I have taken the liberty, sir, over the weekend of preparing and submitting to Your Honor, which I will do verbally, a rather complete offer of proof.

I offer, if Your Honor pleases, to prove by this witness the following:

"Mr. Brill is an architect and engineer who is the managing partner of DeLeuw, Cather & Brill of New York City. DeLeuw, Cather & Brill is affiliated with DeLeuw, Cather & Company of Chicago. These organizations are engaged as consulting engineers and architects. Their activities encompass a very broad range (3373) of engineering with special emphasis on the field of transportation. The architectural work is incidental to engineering. The two organizations have a staff of about 275 and about twice that number of employees, the vast majority of whom are technical. Both organizations have had vast experience in the design and construction of highways. They have been engaged in such projects as the Superhighway Plan for Chicago, the Expressway Plan for Milwaukee, Wisconsin, the Northeastern Turnpike, Oklahoma, the Turner Turnpike, Oklahoma, the Dallas-Houston Turnpike, the Inner Loop Freeway System, Washington, D. C., the Expressway System, Providence, Rhode Island, the Lower Manhattan Expressway, the Master Highway Plan, Boston, Massachusetts, the New Jersey Turnpike, the Garden State Parkway, the Southern Freeway, San Francisco, California, the Lake Shore Expressway, Toronto, Canada, the New York State Thruway, the Southern Louisiana Turnpike, the Taconic State Parkway, New York, the Massachusetts Turnpike, the Indiana Toll Road, the Ohio Turnpike and the Sunshine State Parkway, Florida. They have executed preliminary location studies; design and cost-estimates for 20 projects having an estimated construction cost of (3374) $1,800,000,000. They have executed final designs, contract drawings and specifications or have been general consultants for 43 projects having construction costs of $490,350,000. They have supervised the construction of or have been general consultants on 20 projects which cost $338,000,000. Of these projects, Mr. Brill had direct personal respon-

sibility for 23 projects, the construction cost of which was $126,350,000 and for supervision of 13 projects, the construction cost of which was $105,000,000.

"Defendants offer to prove through this witness the following:

"1. Based upon data published by the U. S. Bureau of Public Roads in the year 1949, of the 872,750 miles of roads in the area East of the Mississippi and North of the Potomac Rivers 87% were not designed to carry axle loads of 18,000 pounds and above. In 1954, of the 876,640 miles of roads in the same area 84% were not designed to carry such heavy axle loads.

"2. Subjecting such roads to axle loads of 18,000 pounds or more, for which they were not designed, materially shortens their life expectancy and increases cost of maintenance and reconstruction.

(3375) "3. The Maryland Road Test and the Washo Test substantiate these conclusions.

"4. Based upon data published by the U. S. Bureau of Public Roads the total number of trucks and combinations registered in the area East of the Mississippi and North of the Potomac Rivers has increased from 1,437,000 in 1936 to 3,196,000 in 1954.

"5. Based upon data published by the U. S. Bureau of Public Roads the frequency of occurrence of axle loads of 18,000 pounds or more in 1954 is 250% of the frequency of occurrence of such loads in 1936. The frequency of occurrence of axle loads of 20,000 pounds or more in 1954 is 350% of the frequency of occurrence of such loads in 1936. The frequency of occurrence of axle loads of 22,000 pounds or more in 1954 is more than 400% of the frequency of occurrence of such loads in 1936.

"6. The roads East of the Mississippi and North of the Potomac Rivers are being subjected to increased

frequency of application of heavy axle loads (axle loads of 18,000 pounds or more) which materially shorten the life expectancy of such roads and increases the cost of their maintenance and reconstruction, since the great majority of these roads were not constructed (3376) to withstand heavy axle loads.

"7. Based upon data published by the U. S. Bureau of Public Roads, trucks and combinations in the area East of the Mississippi and North of the Potomac Rivers travelled 2.4 times as far in 1954 as they did in 1936. Single unit trucks travelled 1.8 times as far, and combinations travelled about 4.7 times as far.

"8. This shows a trend in frequency of heavy load applications that will have a serious adverse effect on the major part of the roads in question, at least 85% of which were never designed to carry such loads, thus increasing costs of maintenance and reconstruction.

"9. Not only do heavy trucks have a serious adverse effect on existing highways, thus increasing costs of maintenance and reconstruction, they also affect the current design of highways so as materially to increase the cost of constructing such highways.

"10. Heavy trucks affect the geometric criteria of highway design, such as, pavement widths, structure clearances, gradients, intersections, radius of curves, and number of lanes. All of these factors must be more substantial to accommodate heavy trucks, and therefore there is considerable increased expense in providing such facilities in designing highways for (3377) heavy truck traffic.

"11. Both the pavement and the foundation of roads for heavy trucks must be thicker to sustain heavy axle loads than those required to sustain light loads and passenger vehicles. Therefore, in this regard also it is more expensive to construct highways for heavy trucks than for light vehicles.

"12. Bridges must be heavier and therefore more expensive to sustain heavy trucks than to sustain light vehicles."

We anticipate, sir, showing substantially all of what I have indicated as briefly as I could through this witness and based upon his experience.

• • •

(3398) JACK E. LEISCH, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Rhoads:

Q. Mr. Leisch, what is your business?

A. I am a highway engineer.

Q. A graduate of what institution?

A. The Baltimore Polytechnic Institute, the Maryland Institute of Art, and the Johns Hopkins University, in 1934, with a degree of Bachelor in Engineering.

Q. Won't you please keep your voice up? I am afraid I can hardly hear you here, Mr. Leisch.

Now, just give us briefly your educational background, Mr. Leisch.

A. I am a graduate of the Baltimore Polytechnic Institute, the Maryland Institute of Art, and the Johns Hopkins University.

Q. And any degrees?

A. Yes.

Q. What?

A. Bachelor of Engineering in Civil Engineering, 1935.

(3399) Q. 1935?

A. Yes.

Q. Now, are you a member of any professional societies or associations?

A. Yes, I am.

Q. What?

A. The American Society of Civil Engineers. I am a registered professional engineer in the District of Columbia. I am a member of several highway research board committees, namely, a member of the Committee on Highway Capacity, Secretary of the Committee on Guardrails and Guideposts, and Secretary of the Committee on Geometric Design.

Q. Now, what is your present employment or occupation?

A. I am with DeLeuw, Cather & Company, Chicago.

Q. And how long have you been associated with DeLeuw, Cather & Company, in Chicago?

A. Since August 15, 1956.

Q. 1956?

A. Yes, this year.

Q. And immediately prior to your becoming associated with the DeLeuw, Cather & Brill, what was your business?

A. I was a highway engineer with the U. S. Department (3400) of Agriculture, Bureau of Public Roads, for over twenty years.

Q. From 1936——?

A. From February 1, 1936.

Q. And during the time that you served as a member of the staff of the Bureau of Public Roads, what were your activities in the Bureau?

A. Well, they might be divided into three phases: One, in a consulting capacity on matters relating to geometric design, to State Highway Departments and to the Bureau of Public Roads Division and District offices; two, you might say, in a teaching or training capacity, in conducting schools relating to geometric design, highway capacity, and arterial highways in urban areas. These courses were given to highway engineers and traffic engineers in State Highway Departments and in the District and Division offices of the Bureau of Public Roads. Three, assignments, special assignments, having to do with design development, mainly in developing design standards, criteria, and design

techniques for the American Association of State Highway Officials. The latter actually took most of my time in recent years.

Q. Now, was your work in the Bureau in connection with (3401) highways?

A. Yes, at all times.

Q. And, did you have to do with the design of highways?

A. Yes, I did.

Q. Now, did you during the time that you were associated with the Bureau of Public Roads make any special studies in connection with your work in the Bureau?

A. Yes. That is the work that I mentioned in connection with the American Association of State Highway Officials. It had to do in the development of design policies, which were culminated in two publications of which I was the principal author. One is "A Policy on Geometric Design of Rural Highways," published by A. A. S. H. O. in 1954, and the other, "A Policy on Arterial Highways—Urban Areas," now being printed by A. A. S. H. O. It is a companion volume to the first text that I mentioned.

• • •

(3403) Mr. Rhoads: I offer, if Your Honor pleases, to prove by this witness, Mr. Leisch, that he

> "is a registered professional engineer, a member of the American Society of Civil Engineers; Secretary of the Committee on Geometric Design, a member of the Committee on Highway Capacity, and Secretary of the Committee on Guardrails of the Highway Research Board. He is now associated with the firm of DeLeuw, Cather & Brill, consulting engineers, and for twenty years prior to August, 1956, (3404) served as an engineer for the United States Bureau of Public Roads. His most recent assignment with the Bureau was Chief of the Design and Development Section. During the past ten years he acted in a consulting

capacity on special design problems to state highway departments and bureau of public roads division offices. In connection with a project for the American Association of State Highway Officials, Mr. Leisch made a special study, over a period of many years, of the effects of driver behavior and vehicle characteristics on traffic operation and geometric design of highways, with emphasis on traffic. This work culminated in the publication of two important books, of which Mr. Leisch was the principal author. They are: 'A Policy on Geometric Design of Rural Highway,' A. A. S. H. O., 1954, and 'A Policy on Arterial Highways—Urban Areas,' to be printed soon by A. A. S. H. O. These two volumes have been adopted by the States as national design policies and will be used as standards for the development of the huge thirteen-year Federal highway program.

"Defendants offer to prove through this (3405) witness, the following:

"1. Trucks, because they are generally wider, longer, and higher than passenger cars, and because of their lower speed of operation, have a significant effect on the geometric design of highways, requiring larger dimensions and over-all higher standards than are required for passenger cars. The result of these higher standards is materially increasing the costs of highway construction.

"2. Geometric design features are those involving widths, grades, overhead clearances, and other factors not directly related to the strength of the highway.

"3. Among the geometric design features affected by large trucks are the following:

"(a) *Pavement width.* The width of vehicles is an important factor in the determination of widths of traffic lanes and pavements since, over the road, trucks

are wider than passenger cars, a greater width of pavement is required to accommodate them. On two-lane rural highways where traffic is composed entirely of passenger cars, a (3406) twenty-two foot pavement is sufficient. When trucks are present in a significant volume, however, the width must be increased to at least twenty-four feet.

"(b) *Structure clearances.* A greater vertical clearance from the road surface to the ceilings of tunnels, the portals of truss bridges, and in the placement of overhead signs, etc., is required on roads subjected to truck traffic because of the greater heights of such vehicles. On facilities limited to passenger cars, 12.5 foot clearances are permitted. Where truck traffic is anticipated, the vertical clearance must be at least fourteen feet. This 1.5 foot difference in design standards frequently results in the necessity of using more structural materials for overpasses, and in lengthening connecting ramps, or increasing the amount of excavation.

"(c) *Highway grades.* Because of their low ratio of horsepower to load carried, most trucks now in use are incapable of maintaining reasonable speeds on sustained grades. This results in traffic congestion and may become hazardous when (3407) motorists become impatient and attempt to pass when it is not safe to do so. As a result, extensive excavating and filling operations become necessary in order to reduce the critical length of grades.

"(d) In areas where it is not feasible to reduce the critical length of grades, 'climbing lanes' must be constructed for use by the trucks. This increases the width of a two-lane highway by one-third and may double in places where 'climbing lanes' on opposite sides of the hill overlap at the crest.

"(e) *Intersections.* When truck traffic is encountered in volume, the paved areas of intersections and interchanges must be expanded considerably. This results from the fact that trucks have a greater radius of turn and because of their 'off-tracking' characteristics. A truck eight feet wide occupies an area 20.6 feet wide when making a sharp turn. A passenger car, on the other hand, is 6.5 feet in width and occupies an area of 10.3 feet wide in making a turn.

"(f) *Median widths.* The unpaved central (3408) median in divided highways must be considerably wider when large trucks are encountered. The median must be wide enough to permit the long vehicle to pull out of the traffic stream when crossing the highway or making left turns. Wider medians mean greater costs for the acquisition of rights of way and for grading, excavation, etc.

"(g) *Sight distances.* Because of their lower rate of acceleration and their greater length, trucks require more time than passenger cars to cross a highway. As a result, they must have greater sight distances to insure a safe crossing. This results in greater costs for landscaping, clearing obstructions, grading, etc.

"(h) *Extra lanes.* Large trucks sharply reduce the practical traffic capacity of highways. As a result, extra lanes must be constructed when truck traffic increases. This is particularly true in hilly or rolling terrain, such as is encountered in many parts of Pennsylvania.

"4. The changes in geometric design standards listed above result from the presence of truck traffic on the highways. Each of these changes increases the total cost of highway construction. (3409) When the occurrence of truck traffic necessitates the widening of a two-lane highway to four lanes, the cost of construction and maintenance may be doubled."

That, sir, is substantially the proof which we propose to develop through the witness who is now on the stand, and all of it, as Your Honor sees, goes to the so-called geometric design of highways, which, as Your Honor knows, is distinct from the structural or pavement phases of the highway.

• • •

(3410) RICHARD T. CASH, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Rhoads:

Q. Mr. Cash, where do you live, sir?

A. 266 Douglas Avenue, Elgin, Illinois.

Q. And what is your present business or profession?

A. Highway engineer.

Q. And could you give us a resume of your educational background?

A. I graduated from high school in 1906, attended the University of Kentucky until my junior year, in 1911, and then I went to work. I am a registered professional engineer in Illinois.

Q. And when did you become a registered professional engineer in Illinois?

A. About ten years ago.

Q. And are you a member of any professional societies or associations?

A. Yes.

Q. And what are they?

A. I am a member of the Illinois Society of Engineers, (3411) the National Society of Professional Engineers, the American Association of Engineers, and the Illinois Association of Highway Engineers.

Q. And with what firm or organization are you presently connected?

A. DeLeuw, Cather & Company, of Chicago.

Q. And how long have you been associated with that organization?

A. Since April 19, 1955.

Q. And by whom were you employed before that?

A. I was employed for 38 years by the Illinois Division of Highways.

Q. In what capacity, sir?

A. Starting with resident engineer and becoming assistant district engineer, and the last 23 years of my employment, I was district engineer in two different districts.

Q. And which districts were they?

A. That was two years at Elgin, Illinois, eight years at Paris, Illinois, and the last 13 years at Elgin, Illinois.

Q. Now, could you tell us what were your duties as district engineer?

(3412) A. I had general supervision of all the activities in eight counties in the Elgin District, and twelve counties in the Paris District. That supervision involved the handling of seven different bureaus, Design, Construction, Maintenance, Materials, County Roads and City Streets, Research and Planning, and Traffic.

* * *

(3417) The Court: I think we have his qualifications.

Mr. Rhoads: Yes, sir. And I offer to prove by him, after his qualifications have been established, the following:

(3418) "1. Increases in traffic accompanied by increased speed and capacity of vehicles have created highway problems and necessitated highway design, construction and maintenance changes. Heavy commercial vehicles, meaning those with single axle loads in excess of 18,000 pounds, cause serious pavement damage unless pavement thickness and subgrade support are increased in order to carry such heavier loads. While

an engineer can design roads to carry almost any volume or load safely, the cost of such a road would be enormous.

"2. *During Mr. Cash's term as* district engineer of District 1 at Elgin, Illinois, a continuing study of pavement damage on Section 344, State Bond Issue Route 54, was made under his supervision. This study was initiated because of the distinct differences in the character of the traffic using the two opposing traffic lanes and in the resulting behavior of the pavement slabs. This difference was the result of a large number of tank trucks and combinations carrying heavy loads of petroleum products from refineries in the northbound lane and returning empty in the southbound lane. The study concluded that the similarity (3419) of all other conditions affecting the behavior of the pavement on the two lanes of this section of highway provided conclusive evidence that the greater damage and more extensive failure of the northbound lane was directly attributable to the excessive axle loads operated in that lane.

"3. As the result of the severe winter of 1942-43, downward drainage caused a completely saturated subgrade under the pavement surface of practically all roads in the northern tier of eighteen counties of Illinois. This subgrade condition resulted in extensive damage to pavement surfaces on the roads which were classified as truck routes while those roads which were classified as passenger car routes in practically all cases carried traffic satisfactorily under the same subgrade conditions.

"4. In 1919 and 1920 Mr. Cash was division engineer in charge of the construction of 40 miles of concrete pavement on Route 24 between Springfield and Peoria. At the time this section of road was opened to traffic and for several years thereafter, commercial

traffic did not increase materially in volume or weight. By the time commercial traffic (3420) increased to a point where it became an appreciable factor in the use of highways, other roads which were built to higher standards were in existence between these two cities; and therefore, the commercial traffic used these roads and avoided Route 24 because of its functional deficiencies. Due to the absence of heavy commercial traffic on Route 24, the thirty-six year old pavement is still in good conditon today without having been resurfaced or patched extensively while the other roads, even though constructed to higher standards, have failed extensively through use by heavy commercial traffic.

"'5. From 1935 to 1943 as district engineer of District 5, Illinois Division of Highways, Mr. Cash supervised the maintenance of over 1,500 miles of state and county pavements including 100 miles of county pavements in Vermillion County, which had been built in 1916. These roads have for forty years been subject to use primarily by passenger car traffic and normal farm-to-market loads. As a result of this type of traffic, a large portion of these county roads is still in good condition. A (3421) few miles of this system have been replaced where industrial development has taken place and the original pavement could not carry the heavier loads induced by such development.

"6. In 1935 and 1936 U. S. Route 41 was constructed from the Cook County line north to the Wisconsin state line. The design of this road was considered at that time to represent the most modern thinking on road design. As a result of the location of this section of road, it was one of the heaviest traveled in the state. By 1951 the pavement on this route had deteriorated to a point where it became necessary to rehabilitate it in order to save the original investment.

A large portion of the cost of rehabilitating this section of highway can be attributed to the extraordinary amount of heavy commercial traffic using this road.

"7. In addition to the aforementioned specific examples of damage to pavements by heavy trucks, which was derived from Mr. Cash's personal experience, he has knowledge of studies in other states which substantiate his findings in Illinois.

(3422) "8. Increased use of highways by vehicles of ever-increasing sizes and weights have necessitated changes in highway design, construction and maintenance."

That is substantially the offer of proof which I hope to establish by this witness.

OFFER OF PROOF—GEORGE W. PEAK.

(3434) I therefore, with Your Honor's permission and with Mr. Kohn's agreement, make the following offer of proof with reference to the witness George W. Peak, presently a resident of Indianapolis, Indiana:

(3435) Mr. Peak, I will offer to show, is Director of Organizational Planning for the Public Service Company of Indiana.

He graduated from the University of Kentucky in 1934 with the degree of Bachelor of Science in general business administration and received a Master's degree in Government Management from the University of Denver in 1941.

In 1934 Mr. Peak was Research Assistant for the Bureau of Business Research of the University of Kentucky, assisting Professor James W. Martin, in his then capacity as chairman of the committee of the National Tax Association, to prepare a draft of a committee report on motor fuel taxation.

During the period from 1937-39 Mr. Peak served as Research Assistant, Division of Research and Statistics, Kentucky Department of Revenue and in 1941 he was Chief Administrator, Colorado Department of Revenue. From 1941 through 1954 Mr. Peak was associated with the firm of Griffenhagen & Associates, consultants in management, public administration and finance. During his association with this firm he occupied various positions as associate, senior associate, principal associate and finally directing associate.

While with Griffenhagen & Associates Mr. (3436) Peak directed (a) the preparation of the chapter on finance and taxation appearing in the report (dated November 1948) entitled, "A Highway Improvement Program for Illinois," prepared by Griffenhagen & Associates for the Illinois Division of Highways for transmittal to the Illinois Highway and Traffic Problems Commission; and (b) the preparation of the entire report (dated February 1950) entitled, "Highway Finance and Taxation in New York," prepared by Griffenhagen & Associates for the Citizens Public Expenditure Survey, Inc. of New York State.

Defendants offer to prove through this witness the following:

1. The principal questions concerned with the allocation of highway costs are first, whether to and how to provide the costs of providing highways as between the highway users and the non-highway users; second, how to divide the user share among the various classes of users and among the individual users of each class.

We will show that if it is determined that some portion of the total highway cost is to be borne by general taxpayers as a group, one logical method of arriving at this share is the "basic access method." This method rests on a theory that general taxpayers as (3437) distinguished from vehicle owners should bear the cost of access to property.

We will show that main thoroughfares are very costly and the basic access element forms only a minor percentage

of their cost so that the greatest share of the cost of these roads should be allocated to highway users as a group.

2. We will show that in dividing the user group share among the various classes of users and among the individual users of each class, the two leading methods that have been advocated are the "incremental method" and the "relative use method."

3. We will show that the "incremental method" entails the determination of successive increments of highway costs, over and above the cost of a basic highway suitable for passenger cars and light vehicles, that are attributable to larger and still larger vehicles on up the scale of vehicle sizes and weights. All vehicles then share in the basic highway costs; all vehicles except the passenger cars and the light vehicles share in the first increment of highway costs over and above the cost of the basic highway; and so on until the largest vehicles share in the last increment of cost. Thus, the largest vehicles bear all the last increment of cost and share in (3438) all the other increments of cost and in the cost of the basic highway.

4. We will show through this witness that the "relative use method" does not attempt to assess elements or increments of highway costs but rather measure the relative amounts of highway use and divides the total cost in proportion to these relative amounts. It is based on the premise that the highway user share of highway costs should be divided among the users in proportion to the relative use they make of the highways and that the two principal factors in the measurement of highway use are the distance operated and the gross vehicle weight. This method does not attempt to distribute any one element of highway cost among vehicles. It holds the various elements of highway cost to be joint and inseparable, practically speaking, and it therefore attempts to allocate the total on the basis of reasonable indexes of highway use.

5. We will show through this witness that the "incremental method" and the "relative use method" are not basically inconsistent one with the other.

6. We will show that the "incremental method" and the "relative use or weight distance method" take into consideration one of the major factors which the engineering evidence demonstrates is largely responsible (3439) for the cost of maintenance and reconstruction of existing highways and the cost of constructing new highways, gross vehicle weight, of which axle loads are a function. The weight distance method, however, in addition, embraces another engineering fact responsible for these increased highway costs, distance, of which number of applications of loads are a function.

7. We will show that the "incremental method" is more complicated to apply than is the "relative use method."

8. We will show by this witness that under the "incremental method" when a total cost responsibility for a given vehicle class has been determined, the division of this responsibility among the various vehicles in that class can be attained on a vehicle registration basis or on a vehicle mile basis or on a weight distance basis. It would seem that the most equitable way of accomplishing this allocation would be on the weight distance basis.

9. We will show by this witness that it has been widely, but erroneously, assumed that the "relative use method" yields a higher cost allocation to the heavy vehicle groups than does the "incremental method."

10. We will also show that both the (3440) "incremental method" and the "relative use method" have been widely used. In the so-called Federal Coordinators' report, the "incremental method" was relied upon. A later federal study by the Congressional Board of Investigation and Research rejected the "incremental method" as imprac-

tical of application and employed the "relative use method." The "incremental method" has been attempted in studies in such states as Ohio, Oregon and others, while the "relative use method" has been used in studies in such states as Illinois, New York, New Jersey, Ohio, California, Washington, Michigan and others. A study in Virginia employed both methods.

11. We will show by this witness that any method of allocating the highway user share of highway costs among the individual users should be based upon the criteria of equity, simplicity and practicality of application. The "incremental method" fails almost completely to meet the tests of simplicity and practicality. The relative use method is not only equitable but also meets the tests of simplicity and practicality.

12. We will show by this witness that the impact of highway user taxes generally on vehicles of various classes is described in a study of 1952 tax data by the Division of Research of the Bureau of Public Roads. (3441) The results of the study were reported in a paper entitled, "Estimate of Highway Taxes Paid by Vehicles in Different Type and Weight Groups," published in the June, 1954, issue of Public Roads. This study shows that heavy vehicles are not paying their fair share of highway user taxes in the states encompassed in the study.

13. We will show that a study published in the October, 1956, issue of Public Roads entitled, "Highway-User Tax Schedules Recommended in State Highway Finance Studies," also demonstrates that studies in a number of states reached the conclusion that heavy vehicles do not pay their fair share of highway taxes.

14. We will show that studies made in the States of Oregon, California, Washington, Illinois, Michigan, Ohio, New York, New Jersey, and Virginia reached similar conclusions.

15. Finally we will show by this witness that the witness will state that, in his opinion, irrespective of which theory is applied, i.e., the "incremental" or the "relative use" theory, that heavy trucks do not bear their fair share of costs of construction and maintenance of our highways.

That sir, is the offer of proof which I desire to make in the case of the witness George W. Peak.

* * *

OFFER OF PROOF—DR. BURTON N. BEHLING.

(3443) Mr. Rhoads: If Your Honor please, in line with my statement a moment ago, and under the same situation as to convenience of Your Honor and agreement of Mr. Kohn, I now present the offer of proposed proof of Dr. Burton N. Behling, who if called would testify as follows:

Dr. Behling, the witness, is an economist. His full name is Dr. Burton N. Behling.

His educational background includes graduation from Lawrence College of Appleton, Wisconsin, in 1928 with the degree of Bachelor of Arts. He received in due course a master's degree from the University of Illinois in 1929, and in 1931 he received the degree of Doctor of Philosophy, also from the University of Illinois. All of his graduate study and the majority of his under-graduate work was in the field of economics.

Dr. Behling was a member of the faculty of the University of Illinois from 1931 to 1938 during which time he taught in the field of transportation, public utilities, corporate finance and the principles of economics. From 1936 to 1938, Dr. Behling was a member of the faculty of the graduate school of the University of Illinois.

From 1939 to 1941 the witness served with the Interstate Commerce Commission as Economic Statistical Analyst.

(3444) From 1941 to 1944, Dr. Behling served with the Board of Investigation and Research, a temporary agency created by Congress to investigate transportation. He was

director of that section of the investigation which concerned itself with Public Aids to Domestic Transportation. The report of this section, of which Dr. Behling was the principal author, is embodied in House Document 159—79th Congress.

We will show that from 1944 to 1948, Dr. Behling served as Special Assistant to the Federal Power Commission, in which capacity he directed the nationwide natural gas investigation, and was the principal author of the report resulting from this investigation.

From 1949 to 1954, Dr. Behling served as Senior Transportation Specialist in the Legislative Reference Bureau of the Library of Congress. The Legislative Reference Service is an arm of Congress, the purpose of it being to assist members of Congress in respect of legislative matters which concern them.

Since August of 1954, Dr. Behling has held the position of Economist with the Association of American Railroads, and in that capacity has appeared as a witness for the railroad industry in the Congressional hearings during 1955 and 1956 on the National Highway Bill, which eventuated in the passage of the Highway Act of 1956.

(3445) In addition to the reports which have been mentioned, Dr. Behling is the author of "Competition and Monopoly in the Public Utility Industry" published in 1938 and of numerous articles in economic journals.

The defendants offer to prove, if Your Honor pleases, by this witness, the following:

1. The matter of the equitable allocation of highway costs is of vital importance to the public generally. The basic issue is whether highways should be paid for by highway users or by the general taxpayer. The witness will show that it is unsound to finance with general funds the provision of transportation facilities for a clearly identifiable segment of the public, such as, users of highways. As the direct beneficiary, highway users are the logical source of funds to meet whatever costs may be incurred.

2. The financing of highways from general funds diverts such funds from many other governmental functions that can be supported only by general funds; e.g., national defense and education. Highways today are in large measure commercial traffic arteries and should be paid for on an economic basis in keeping with the fundamental principles which run throughout the nation's price and cost economy.

(3446) 3. A direct or indirect subsidy to any form of transportation is contrary to the public interest in that:

a. If it could be extended impartially to all modes of transportation, its benefits would necessarily be unevenly divided among the taxpayers at whose expense it was provided.

b. It cannot be distributed impartially among the various agencies of transportation.

c. Users are not in a position to choose the form of transportation which they desire based upon the true cost of providing such transportation.

d. Competitive relationships within the transportation system are distorted.

e. The relative economy and fitness of the alternate types are not truly reflected.

f. An uneconomical allocation of capital is encouraged.

g. Distributions of traffic will depart from true economic standards.

h. Waste of public funds is difficult to check.

i. Questions of equity as between general taxpayers who foot the bill and users of transportation (3447) who get the benefits are presented.

4. We offer to prove by this witness that the policy of the Executive Department of the Federal Government as declared by the President of the United States in his Budget

Message of January 21, 1954, and his message to Congress on the National Highway Program of February 22, 1955, is that federal facilities, particularly highways financed through federal funds, should be paid for by the users of these facilities.

5. Based upon studies made by the witness Behling, we will show that large commercial vehicles, in particular heavy trucks, do not pay an equitable share of the cost of maintenance, reconstruction and construction of highways under the principle of relative use of the highways.

6. The relative use theory, or weight-distance method, is predicated not alone upon economic theory but embraces the overwhelming engineering evidence that substantial increases in the cost of maintaining and reconstructing existing highways and constructing new highways result from two factors: heavy gross weights of trucks, of which heavy axle weights are a function, and frequency of application of heavy weights. It also reflects the engineering fact that (3448) the geometric design of highways is affected by large trucks so as to materially increase the cost of construction of such highways.

7. There is substantial basis for concluding that under current conditions all of the cost of maintenance and construction of highways should be borne by the highway user and not by the general taxpayer.

8. Studies have been made in a number of states, and with almost no exception this witness will show it has been concluded in such studies that heavy trucks do not pay an equitable share of the cost of maintaining and reconstructing existing highways and constructing new highways. Among the studies which have reached this conclusion are those made in Oregon, California, Washington, Illinois, Michigan, Ohio, New York, New Jersey and Virginia.

9. This witness will show that based upon available data from the Interstate Commerce Commission, furnished

to the Commission by the motor carriers operating in the Eastern District for the period 1949 through 1954, heavy vehicles operating in this district for these years have paid only approximately one half of the amount which they should have paid in compensatory highway user taxes.

(3449) 10. We will show that based upon data published by the U. S. Bureau of Public Roads, for the years 1953 and 1956, in the states of the Eastern District on a state-by-state basis heavy vehicles have paid less than one-half of the amount which they should have paid in compensatory highway user taxes. Thus, these two studies using different sources of data closely conform to each other.

11. We will show that if the carriers operating in the Eastern District had paid the deficiency in user taxes properly allocated to them, their operating expenses in the period 1949 through 1954 for all common carriers of general freight would have been increased between 4 and 6 per cent, and for common carriers of general freight operating with owned equipment principally would have been increased about 4 per cent. Such carriers would have been required to increase their rates on the same percentage basis in order to preserve their margin of income.

If Your Honor pleases, I just want to make it perfectly clear in connection with this offer and the immediately preceding one, that not only do we consider the offers are relevant in connection with the defense asserted by the railroads in this case, but, of course, to the very (3450) basis of the counterclaim which has been asserted by some of the defendants. In other words, we feel the relevancy has a twofold basis, which I think I have presented, and it has been presented by Mr. Price as well. I wish to repeat it emphatically at this moment.

• • •

(3469) WARREN K. MYERS, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Rhoads:

Q. Mr. Myers, where do you live?

A. 3320 North Second Street, Harrisburg, Pennsylvania.

Q. How old are you?

A. Fifty-six.

Q. What is your business?

A. Civil engineer.

Q. How long have you been a civil engineer?

A. I have been practicing since 1923.

Q. Are you a member of any firm or organization?

A. I am presently a partner in the firm of Grof & Myers.

Q. What is the character of the work of that firm?

A. Principally the design and preparation of plans for highways, bridges, and airports.

Q. How long have you been a member of that firm?

A. Since July, 1955.

Q. Will you be good enough to tell me what has been your professional career prior to your becoming a member of the firm of Grof & Myers?

A. From 1923 to 1950, with two interruptions, I was employed by the Pennsylvania Department of Highways.

(3470) Q. What years?

A. From 1923 to 1950, with two interruptions.

Q. What were those interruptions?

A. 1926 to 1929 I was employed by the Ebersole Engineering Company.

Q. What were you doing with Ebersole?

A. The design and installation of quarry equipment.

Q. And you said there was another interlude that occurred between 1923 and 1929. What was that?

A. Between 1935 and 1939.

Q. Between 1935 and 1939. What was it?

A. I owned and operated the Allied Asphalt Company at Pittsburgh, Pennsylvania.

Q. What was the business of that company?

A. The construction of roads and streets.

Q. Following 1950 and before you became associated with your present firm, did you have any other business connections?

A. In 1950 I went to Florida and designed and had charge of construction of the broad causeway between Miami Beach and North Miami, across Biscayne Bay.

Q. During the time that you were with the Pennsylvania Department of Highways, which, broadly speaking, was between 1923 and 1950; is that correct?

(3471) A. That is correct.

Q. What positions did you hold in the Department of Highways of the Commonwealth?

A. Well, in the construction unit I held a number of positions from assistant inspector, assistant engineer, district engineer, and then I was assistant chief engineer.

(3472) Q. During the time that you are now speaking of, did you have any responsibility for the maintenance of highways in the Commonwealth?

A. During the same period I filled all of the jobs in the maintenance unit. I was an assistant maintenance superintendent, a maintenance superintendent, a district maintenance engineer, assistant chief maintenance engineer and chief maintenance engineer.

Q. Did there come a time when you became Deputy Secretary of Highways?

A. Yes. In 1943 I was appointed a Deputy Secretary of Highways under Secretary Shoyer.

Q. For how long did you hold that job or that position?

A. From 1943 to 1950. That was concurrently with my position as Chief Maintenance Engineer.

Q. And during the time that you were Deputy Commissioner, Deputy Secretary of Highways, what were the responsibilities that were incident to that office?

A. The responsibilities of Deputy Secretary were principally signing documents for the Department of Highways and representing the Secretary at his request.

Q. What was the responsibility, what did the (3473) responsibility you are talking about involve so far as the state highway system is concerned?

A. Well, my principal responsibility in that position from 1943 to 1950 was the responsibility for the maintenance of the entire state highway system, consisting of approximately 41,000 miles of state highways.

Q. That was during that seven-year period you were speaking about?

A. That is correct.

• • •

(3475) By Mr. Rhoads:

Q. Can you tell us, Mr. Myers, when in your own experience the effect of heavy trucks on the roads of the Commonwealth of Pennsylvania became apparent?

Mr. Kohn: That is objected to, sir. I think in view of the continued line we probably ought to have an offer of proof, if Your Honor is willing.

Mr. Rhoads: If Your Honor pleases, I am prepared to ask a series of questions, and I will, of course——

The Court: I don't want to interrupt you, Mr. Rhoads, but I think I have made myself particularly clear that I will accept no further testimony in this case regarding the effect of trucks on roadway surfaces.

• • •

(3502) Q. Now, referring to Exhibit 120 which is before you, will you tell us what types of roads indicated on that (3503) chart, 120, were designed for axle loads of 18,000 pounds or over.

Mr. Kohn: Objected to, sir.

The Court: Read the question back.

(The reporter read the pending question.)

The Court: I sustain the objection.

Mr. Rhoads: Does Your Honor wish me to give you an offer of proof, sir, on that particular point at this time?

The Court: If you care to protect your record, Mr. Rhoads.

Mr. Rhoads: Well, I simply would like to show by the question which I have asked and the answer which would indicate that none of the roads in the category of unimproved and like type roads which the witness will describe, were designed for axle loads of 18,000 pounds or over, and that in the opinion of the witness only about 10 per cent of the roads in the type which he will describe as high type flexible category were designed to carry loads of 18,000 pounds or over.

The Court: Very well. An objection has been made and sustained.

Mr. Rhoads: I then further offer to prove, in view of Your Honor's ruling, that approximately 85 per (3504) cent of the total category of roads, including local and state highways, highway system, are not designed for such traffic.

Mr. Kohn: The same objection, sir.

The Court: The same ruling.

By Mr. Rhoads:

Q. Mr. Myers, may I just ask you the general question? What is the state highway system? I don't know whether you have told us that or not.

A. The state highway consists of roads that have been adopted by the legislature as a part of the state highway system.

Q. Mr. Myers, will you refer to the Biennial Report for 1948 and 1950. I think it is before you, is it not?

A. Yes.

Q. Do you have it before you?

A. I have it, sir.

Q. Will you refer to page 1 of the Biennial Report for that year, 1948 and 1950?

A. Yes, sir.

Q. Is there a chart on page 1 of that report?

A. There is.

Q. What is that chart?

A. The chart is the "Age of Pavements, Rural Primary (3505) State Highway System."

Mr. Rhoads: I ask that the table identified by the witness on page 1 of Exhibit 119-D be marked for identification as Exhibit 121.

(Chart on page 1 of Exhibit 119-D was marked Exhibit D-121 for identification.)

By Mr. Rhoads:

Q. Mr. Myers, have you at my request made an enlargement of that chart?

A. I have.

Q. Is that the enlargement before you?

A. That is.

Mr. Rhoads: I will ask that to be marked for identification as Defendants' Exhibit No. 122.

(Enlarged chart entitled "Age of Pavements, Rural Primary State Highway System," was marked Exhibit D-122 for identification.)

By Mr. Rhoads:

Q. Except for the fact of enlargement is that in other respects an accurate copy of the chart on page 1 of 1948?

A. It is with the exception that I added the year 1950 to identify it.

Q. Underneath?

A. Underneath the chart, yes.

(3506) Q. What does that chart show, Mr. Myers?

A. That chart shows the age of the pavement on the state highway system, on the rural primary state highway system. It shows that 17 per cent of the pavements in 1950 were less than 10 years old, and that 83 per cent were over 10 years old.

Q. What significance do you draw from the age of the roads as revealed by the chart which you have just identified?

Mr. Kohn: Objection.

The Court: Sustained.

Mr. Rhoads: I simply wanted to show by this witness and questions which I would propound with reference to the chart that a vast percentage of the roads of the Commonwealth of Pennsylvania are of an age too old to sustain the kind of traffic to which they are being submitted at the present time by virtue of the heavy truck traffic.

Mr. Kohn: That is objected to, the offer of proof is objected to, sir, if that be an offer of proof.

Mr. Rhoads: Well, I intended it, sir, merely as a short cut of an offer of proof. Indeed I did, Mr. Kohn.

The Court: I will sustain the objection to the offer.

By Mr. Rhoads:

Q. Mr. Myers, what is the significance of the fact that a (3507) substantial amount of the roadway in Pennsylvania was not designed to carry axle loads of 18,000 pounds or more, when considered in conjunction with the increase in the numbers of trucks and combinations and their axle loads?

Mr. Kohn: That is objected to, sir. Mr. Rhoads apparently forgot that the other question wasn't permitted to be answered.

The Court: Read the question back, Mr. Comer.

(The reporter read the pending question.)

The Court: I sustain the objection.

Mr. Rhoads: If Your Honor pleases, I wish to show by this witness, through the type of questions intended to be propounded, the deterioration and the enhanced or accelerated deterioration resulting from the use by heavy trucks of highways not designed for that purpose.

Mr. Kohn: I object to the offer and the evidence, sir.

The Court: I will sustain the objection.

By Mr. Rhoads:

Q. Mr. Myers, during the time that you were deputy secretary of highways was any study conducted under your direction regarding the effect of carrying heavy loads of coal on the highways of the Commonwealth?

(3508) A. Yes, sir, it was.

Q. When was it made?

A. In 1948.

Q. In 1948; is that right?

A. I think that is correct, 1948.

Q. What counties did that study cover?

A. It covered 19 counties in which coal operations were carried on.

Q. And what type of traffic was studied?

A. Principally heavily loaded trucks, principally carrying coal in that instance.

Q. And specifically was the study referable to particular counties in the Commonwealth?

A. Yes, sir.

Q. What was the result of that study?

Mr. Kohn: Objection.

The Court: We are going right back to the same question, Mr. Rhoads. I will sustain the objection.

Mr. Rhoads: If Your Honor pleases, I desire at this time to elicit by this witness proof that some 495 miles of road in these counties were affected adversely by the heavy loads of coal trucks, and that damage resulting therefrom approximated some 12 million dollars.

• • •

(3518) Mr. Rhoads: If Your Honor pleases, may I make a brief offer of proof just to cover the last part of this witness's testimony, particularly with reference to the map.

I intend to show by this witness, by referring to D-123, that at the eastern end of the Turnpike there is a section of about 11 miles on U. S. Route 11 which serves as an access road to the Turnpike, for vehicles traveling toward the west on the Turnpike, and an exit road to the east for vehicles leaving the Turnpike. I would show by this witness that in 1949 the average daily traffic count showed 2,067 commercial vehicles, of which 1,031 were semi-trailer combinations.

I will show that pumping joints required subsealing and resurfacing at an average maintenance cost of some $4900 per mile, and that just west of the entrance to the Turnpike there is a section of 2 miles or so on Route 11, the same road, where the 1949 average daily traffic count was some 1,069 commercial vehicles, of which 286 were semi-trailer combinations, that at this point on this occasion there were no pumping of joints and that the average maintenance cost was $325 a mile.

I will also show that as to the western end, (3519) the western terminus of the Turnpike over toward the left is at a place called Irwin, and that Route 30, the Lincoln Highway, leads both westward and eastward from this point; that trucks leaving the Turnpike travel westward from Irwin and that the maintenance costs from Irwin to Wilkinsburg became excessive, amounting to the following, and I will merely give the figure

in 1941 of $15,000, and in 1949 some $538,000; and I wish to show, if Your Honor pleases, by further illustrations from this witness and by visual photographs the result of heavy traffic which came to his observation in various sections of roadway in the Commonwealth of Pennsylvania.

* * *

OFFER OF PROOF—CHARLES E. DeLEUW.

(3538) Mr. Rhoads: Now, if Your Honor pleases, I have but one further offer of proof which I would like to present to Your Honor to complete our record, and I am presenting this offer of proof of Charles E. DeLeuw on the same terms or suggestion which I made to Mr. Kohn yesterday with reference to Mr. Peak and Dr. Behling. He is not presently in court.

The Court: Is he the Mr. DeLeuw of DeLeuw, Cather & Brill?

Mr. Rhoads: Yes, sir.

(3539) And I offer to prove through the witness Charles E. DeLeuw that Mr. DeLeuw is a consulting engineer, currently a partner in DeLeuw, Cather & Brill of New York, President of DeLeuw, Cather & Company of Chicago, and Chairman of the Board of DeLeuw, Cather & Company of Canada, Ltd., Toronto.

That from 1919 to 1929 he was a partner in Kelker, DeLeuw & Company of Chicago, Consulting Engineers, and from 1929 to date President of DeLeuw, Cather & Company; that he has been a partner in DeLeuw, Cather & Brill since 1951 and Chairman of the Board of DeLeuw, Cather & Company of Canada, Ltd., since 1955.

I will show through this witness the vast experience of DeLeuw, Cather & Brill and DeLeuw, Cather & Company in the design and construction of highways similar to the offer of proof respecting Mr. Brill, and I shall not therefore repeat it here.

I will show that Mr. DeLeuw graduated from the University of Illinois in 1912 with the degree of Bachelor of Science in Civil Engineering, and received the professional degree of Civil Engineer; that he is licensed as a professional engineer in 29 states, including Pennsylvania, and is a member of the following engineering societies:

(3540) American Institute of Consulting Engineers
American Public Works Association
American Society of Civil Engineers
American Transit Association
American Water Works Association
Engineering Institute of Canada
Illinois Society of Engineers
Institute of Traffic Engineers
Society of American Military Engineers
The Institution of Civil Engineers
Western Society of Engineers

I will show that from 1933 to 1936 Mr. DeLeuw was Assistant Chief Highway Engineer for the State of Illinois; from 1935 to 1936 he was Director of the Illinois State Highway Planning Society; from 1936 to 1944 he was Consulting Engineer for the Department of Subways and Superhighways of the City of Chicago and occupied the position of Acting Chief Engineer from 1941 to 1944.

Substantively, I will offer to show through this witness the following:

1. That gross vehicle weight as distinguished from axle load is the principal determining factor in the (3541) carrying capacity of existing bridges and the design of future bridges.

2. That vehicles of greater gross vehicle weight are generally larger than those of lesser gross vehicle weight and therefore affect the geometric design of highways so as to make them more expensive.

3. That a given vehicle with a heavier load, and therefore a heavier gross vehicle weight, will have poorer operating characteristics, such as breaking and acceleration, than if it were carrying a lighter load, and that such poorer operating characteristics must be taken into consideration in various elements of geometric highway design, particularly gradients with resulting increased cost of construction.

4. That axle loads are a function of gross vehicle weight, and that on a given type of vehicle with a given number of axles the increase of the gross vehicle weight will necessarily increase the axle load on one or more of the axles.

5. That while gross vehicle weight may be increased without increasing axle loads, if the number of axles is increased, the frequency of application of axle loads is increased by the additional axle or axles, and, in addition, the axle loads will be applied, not only more frequently, but more rapidly.

(3542) 6. That while a gross vehicle weight of 60,000 pounds might not per se have a serious adverse effect on existing highways, such a gross vehicle weight accompanied by single axle loads in excess of 18,000 pounds or tandem axle loads in excess of 32,000 pounds would overtax design capacity and accelerate the deterioration of 85 per cent of the existing mileage in the area east of the Mississippi and north of the Potomac Rivers.

7. That a great many bridges in the area east of the Mississippi and north of the Potomac Rivers were never designed to carry gross vehicle weights of 60,000 pounds.

• • •

EXCERPT FROM GOVERNOR FINE'S HEARING HELD JANUARY 17, 1952.

Mr. Price: If Your Honor please, I have here a transcript of the Governor's hearing held on January 17, 1952, as reported by E. E. Moyer, chief official reporter of the House of Representatives. I should like to read that into the record, sir. Mr. Kohn has said that he would not (3543) require the presence of Mr. Moyer himself, who couldn't be here today, to identify the fact that he took it.

I have a transcript here which has been certified by him. It was taken by a reporting device, reporting tape, and transcribed by him and his assistants under his supervision.

The Court: Taken where and when?

Mr. Price: At the Governor's hearing held January 17, 1952.

The Court: This is a transcript of the hearing before Governor Fine?

Mr. Price: Yes, sir.

The Court: All right, you may read it.

* * *

(3585) Mr. Segal: Your Excellency, please, I am appearing as counsel for the Pennsylvania Motor Truck Association which is the only state-wide freight organization in the Commonwealth representing the owners and operators of commercial motor vehicles. It is the largest State association of its kind and is affiliated with the American Trucking Association. It numbers among its members thousands of owners and operators of trucks for hire as well as the great industrial, manufacturing and commercial concerns in this Commonwealth which operate trucks to carry their own goods.

Preliminarily, I want to say two things which may be obvious to your Excellency, and I will be very brief on them.

First is, that in deference to your wishes and those expressed in your letter, we have written requesting all members to refrain from coming to this meeting except a few official representatives. We know that Your Honor is not going to be stampeded by that kind of demonstration.

• • • •

(3764) . . . I am not going to burden you with a re-explanation, except that I want to say in conclusion that most of the people who appeared here today appeared here without my knowledge—I never heard of them—and without the knowledge of the Association.

• • • •

(3970a) BURTON N. BEHLING, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Price:

• • •

(3986) Q. Would you compare Table III with Table II, Exhibit 203 with Exhibit 202, with particular reference to the period starting in 1946, which of course is the beginning period of Table II and the middle period of Table III.

A. Yes. We saw for the railroads in the Eastern District—both of these tables, II and III, referred to the Eastern District only. The traffic of the railroads had a declining trend through this period. Their freight revenues were on a somewhat upward course. Of course, the explanation is the one that I just offered, that the freight revenues reflect increases in rate levels.

The same is true with reference to the trucks. Their traffic has grown as shown on Table II. Their revenues have grown more.

Q. What significance if any do you attach to the figures shown in Table III, showing so much larger increase in the trend of motor carrier revenues, freight revenues, than railroads?

A. It reflects the kind of traffic which the motor carriers principally carry, that is, what is often referred to as the cream traffic in the vernacular, the higher rate kinds of traffic.

Q. Are you familiar with the average rate per ton of the (3987) traffic handled by the motor carriers and the railroads as shown in this exhibit of Table III?

A. I think perhaps you mean per ton mile.

Q. Per ton mile, whatever the measure is.

A. Yes. The average revenue per ton mile of traffic for the trucks is about 6 cents. For the railroads it is about 1.4 cents per ton mile.

Q. Is that what you mean by the cream of the traffic?

A. The traffic that by and large carries the higher rates, yes.

* * *

(4075) JOHN C. McMICHAEL, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Price:

Q. Mr. McMichael, what is your occupation?

A. I am Assistant to the General Manager of Freight Sales and Services of the Pennsylvania Railroad.

Q. And how long have you been connected with the freight activities of the Pennsylvania Railroad?

A. I have been a full-time employee of the Pennsylvania Railroad since 1927, sir.

Q. And how long has it been in the freight field, field of freight?

(4076) A. 1927.

* * *

(4079) Q. In your position in the railroad at that time did you have anything to do with trying to retain traffic

on the railroads that either was there before or get new traffic that hadn't been there before?

A. That was the job for which I was being paid at that time. It was my—my duties were to develop (4080) traffic for the railroad and to make necessary rate adjustments to take care of business that it was necessary to adjust the rates in order to attract it.

• • •

EXCERPT FROM DEPOSITION OF SAMUEL B. DENNISON.

CROSS-EXAMINATION.

(4750) By Mr. DeLone:

Q. Your full name?

A. Samuel B. Dennison.

Q. And where do you live?

A. 728 Main Street, Reynoldsville, Jefferson County, Pennsylvania.

Q. And what is your business, sir?

A. You mean what is my main occupation?

Q. What is your main occupation?

A. I am an automobile dealer.

Q. How long have you been engaged in that business?

A. Since 1923.

• • •

Q. You say that is your main business. What are your other (4751) businesses?

A. Well, I am presently employed as legislative consultant for the Pennsylvania Motor Truck Association.

Q. How long have you been so employed?

A. From the beginning of the 1953 session of the legislature.

• • •

(4783) Q. How about the automobile clubs during that period from 1941 to 1949?

A. There you got me. Keystone Automobile were very active, and when you speak of dinners—I ate more dinners on Keystone Automobile Club than any other organization in Harrisburg, and they were very much opposed to it. In fact, they paid my expenses for a trip down to view the Maryland Road Test. I spent two days—Mr. Canning and I—going over the Maryland Road Test.

Q. When was that?

A. That was in 1951.

Q. But they had entertained you frequently even before that had they?

A. Oh, yes.

(4784) Q. Were they very definitely opposed?

A. Very definitely opposed.

* * *

EXCERPT FROM DEPOSITION OF H. L. GORMLEY.

Cross-Examination.

By Mr. Price:

(5376) I would like, if Your Honor please, if I may be permitted to read from the depositions of Mr. Gormley which is along the same general subject that we have been considering here.

These are depositions taken on April 16, 1953, starting at Page 908, down near the foot of the page.

By Mr. Price:

Q. What are the funds that the P. M. T. A. operates with, or under, or by? Have you any major divisions of the receipts, assets, that is, income assets, of the P. M. T. A.?

(5377) A. Yes, sir.

Q. Will you describe those, please?

A. We have regular membership and we have sustaining membership. The sustaining membership operates the

public relations fund. The regular membership dues operates the general activities of the Association.

Skipping down five lines.

By Mr. Price:

Q. These regular dues of members were described by Mr. Goglin as carrying the ordinary operations of your Association?

A. That is right.

Q. And they are calculated on the basis of some formula which applies to the various classes of memberships?

A. That is right.

Q. Am I correctly informed that the regular dues do carry the normal operations of the Association?

A. Yes, sir.

Q. And any excess above the ordinary operating expenses——

A. We have never had any excess above regular operating (5378) expenses to the best of my knowledge.

Q. Then, do you have to use some of the sustaining membership money to carry the ordinary operations of the Association?

A. No, the operation is cut to the money there is available to operate.

Q. So your normal operations will exhaust whatever you get from dues?

A. That is right.

Q. But won't eat into the sustaining membership funds?

A. That is right.

Q. Is that correct?

A. That is right.

Q. And the sustaining memberships, then, are devoted exclusively to public relations?

A. That is right.

Q. Which includes legislative activity, this litigation, and so on?

A. All types of public relations, safety activity—any community activities, any public relations, any advertising, telling our story, any pamphlets that are sent out, telling about the trucking industry, all these speakers that go out to talk about the trucking industry, all of that is under public relations.

• • •

EXCERPT FROM DEPOSITION OF FLOYD B. NOERR

CROSS-EXAMINATION.

By Mr. Price:

(5463) Q. Well, if Senate Bill 615 had been passed, you would (5464) be in a stronger position to compete with the railroads than you are today, wouldn't you?

A. Yes, sir.

Q. Well, now, isn't it a fact that a very important part of the accelerated program of your Association through the years from 1941 to 1953 for increased truck weights was due to your desire to be put in a position to compete even more successfully than you do now with the railroads in the matter of rates?

A. Yes, to the extent that many commodities which have to do with movement in a commoditywise shipment—in other words, where the rails have rates that apply for minimum shipments beyond, far beyond what trucks seek or have—in those particular instances, the service of the trucking industry to the industry involved is restricted because of the inability of the motor trucks to compete on a rate basis because of the restricted amount of weight that they may carry on any one particular truck.

Q. Now, your desire to improve your competitive position has stimulated the matter of getting sustaining memberships and finally, in 1952, in the neighborhood—I won't hold you to the dollar figure—of a quarter of a million dollars for your legislative program, isn't that right?

A. Read that again? I didn't get the whole wording.

(5465) (The pending question was read by the reporter.)

The Witness: Yes.

Mr. Green: Wait a minute, he didn't testify that a quarter of a million dollars was raised for any legislative program at all. It was for a public relations program, of which the legislative feature was a part, and I don't think, again, that you are entitled to put words in his mouth.

Mr. Ingersoll: We will let the record speak for itself. We are not far wrong, we are not far apart, Mr. Green.

The Witness: On that basis, I would say that that was, some place in that neighborhood, was the overall picture of the industry's efforts at that time.

By Mr. Ingersoll:

Q. Would you agree that regardless of how you regard the method, that a vast amount of the activities which you complain of on the part of the railroads is an effort on their part to hold their competitive position, or even improve their competitive position, with respect to the competition of heavy trucks?

A. Well, I have never been critical of any kind of (5466) competition that was directly aboveboard and under the eye of the public or the people who are trying to be influenced, and I don't think that the two industries, in their competitive position, should be more than competing on their ability to furnish service according to rates and service.

I am not critical of competition. I am just critical of the means of obtaining the competitive angle.

Q. Well, is it an exaggeration for me to say that your effort to get 615 passed and signed by the Governor was to obtain authority to carry such weights as would drive the railroads out of a competitive position with respect to a considerable body of traffic?

A. No, sir. No, I don't believe so. I believe that our effort was to, in a small measure, make the truck industry competitive and available to industry itself.

Q. Well, if you gain your ends, you would have increased your profits, wouldn't you?

A. We hoped to, yes.

Q. And you would have been in a position to more actively compete with the railroads in relation to rates?

A. That is right, in relation to rates and services to the industry that is in Pennsylvania.

(5467) Q. And your not having attained your ends and the statute having been vetoed, the railroads retained the position as existed before the excitement; that is correct, isn't it?

A. Yes. I still claim that the industry has been hampered just to that extent.

Q. You want business, some of the business that the railroads now have, don't you?

A. Yes. There is a little larger pictures than just some of the business the railroads have. Again, the angle of development of the State of Pennsylvania is very definitely tied into transportation, and anything, regardless of what it is, that in some measure restricts transportation and the availability of the goods in or out of the state hampers the growth of our state and the good of everybody that lives in it.

* * *

(5473). Q. In paragraph 28 of the Complaint, it is averred that as the result of the conspiracy, the plaintiff's business was disparaged in the public mind and plaintiffs were impeded in the conduct of their business.

Have you any information about that with reference to the Noerr Motor Freight Company except what counsel told you?

A. Only generally. The disrepute on the industry as a whole reflects on individual operators within the industry. All things that make one segment of the industry look bad make the whole industry look that way.

Q. But have you any specific event or act or occurrence which is the basis of the averment that the plaintiff—that is, the Noerr Motor Freight in this case—was impeded in its business?

A. No.

Q. Or the P. M. T. A.?

A. No.

Q. It is also averred in the same paragraph that the plaintiffs were financially damaged as a result of the failure to pass beneficial legislation, or legislation (5474) beneficial to the plaintiffs. Have you any evidence of financial damage to the Noerr Motor Freight Company?

A. Yes. Generally there were many instances of additional costs of operation of the business due to the restricted weight limits permitted on vehicles. There was the business that could not be solicited because of the weight limitation, which also limited the rate that could be applied to the commodity. There were many times that four trucks had to be used to haul commodities that could have been handled with three trucks if the increased weights had been available.

There was a general overall cost of working under a hampered condition between movements for the commerce of Pennsylvania from the manufacturing point within the State of Pennsylvania out to places beyond the borders of Pennsylvania.

Also, there was the additional costs of moving of the commodities necessary to industry in Pennsylvania from points beyond the border into the manufacturer and user of these various commodities.

Q. Then all those classes of damage that you have referred to resulted from a continuation of the motor vehicle law in Pennsylvania as it has been for a number of years, and the failure to change it in accordance with either the (5475) 1949 Act or the 1951 Act?

A. That is right.

Q. You have no specific evidence or any specific piece of business that you can refer to in that connection, have you, Mr. Noerr?

A. Yes, I do.

Q. All right, will you name them, please?

A. I have authority from the Public Utility Commission, speaking of our own company, to move brick from our area of Lewistown to all points in the State of Pennsylvania. The restricted weight that is presently applicable to the movement of this commodity on the highways necessitates a higher per ton rate than would be possible if there were higher weights permitted. As a consequence, I have not been able to compete with the rail rates that are applicable to movement of brick from our area of Lewistown to other points in Pennsylvania.

I have, of necessity, had to file rates that were higher than the competing rate that the rail maintains from this area to other points in Pennsylvania, and, as a consequence, I have not been able to have this business, to add this business or part of it to our particular line.

Q. Any other instance?

(5476) A. That is a particular instance. I don't recall just others.

Q. You don't recall on any other commodity?

A. Yes, there is another commodity. There is a movement of chemicals from Philadelphia to Lewistown area that I have not been able to enjoy any part of, on account of the weight restriction relative to highway use, and also again the competitive rate has not been available due to the restricted amount of chemical that can be moved at one time.

Q. Anything besides bricks and chemicals?

A. That is all I can think of at the moment.

• • •

EXHIBIT P-3.

July 13, 1949

Mr. Thomas J. Deegan, Jr.
Vice President—Public Relations
The Chesapeake and Ohio Railway Company
4500 Chrysler Building
New York 17, N. Y.

Dear Mr. Deegan:

We appreciate this opportunity to submit a proposal to represent your Committee.

We have no client interest which would in any way conflict with this work.

Carl Byoir & Associates, Inc. is an organization employing 160 people representing 16 clients. We maintain a staff of specialists in the following fields:

Business and financial news
Radio and television
Newsreel *and pictures*
Magazines
Women's Interest
Governmental Relations
Agricultural Relations
Merchandising
Special Promotions

We maintain completely staffed offices at New York, Chicago, Washington and Los Angeles. We have full time resident representatives in Boston, Philadelphia, Jacksonville, Detroit, Columbus, Minneapolis and Hamilton, Ont.

Since all of the members of your Committee are themselves expert in the field of public relations, I assume that it is not necessary to take your time here to make any presentation of our ability to secure adequate background publicity for the campaign you are planning.

Since, as we understand it, legislative action is necessary to obtain the objectives sought, we are outlining part of our record in this field.

isiana lphur erance

In 1936 the Louisiana Legislature, by unanimous vote in the House and with a single dissenting vote in the Senate, increased the sulphur severance tax from 60¢ a ton to $2. a ton. We were retained by the Freeport Sulphur Company to undertake to secure a reduction of this tax. The company was fearful that if the tax was not reduced, the state of Texas would increase its tax from $1.03 a ton to $2. a ton. Only these two states produce sulphur. In Louisiana our client was the only producing company and, of course, the only company subject to the tax.

We planned to campaign to show that the tax was not merely against the company but against the interests of the whole economy of the state. It was not merely a publicity campaign. It was a campaign of organizing all of those groups in the state which represented large segments of public opinion; persuading them to take a stand against the tax and permitting us to publicize their positions.

At the next session of the Legislature they not only passed legislation reducing the tax from $2. to the level of the Texas tax (of $1.03), but they passed it in the form of a constitutional amendment which meant that the tax could never again be increased without the consent of two-thirds of both houses rather than a simple majority.

In the general election the amendment was overwhelmingly adopted.

ti-Chain re islation

In the 1920's enemies of the chain stores began to attack the chains legislatively through discriminatory and punitive taxes. By 1937 fifty such taxes were in effect in 29 states. In that year alone 96 anti-chain bills were introduced in state legislatures and 7 were enacted into law.

At that point we were retained by the Great Atlantic & Pacific Tea Company to oppose a chain store tax bill in the New York State Legislature.

For the first time in the history of such legislation this bill was opposed openly, through an intensive campaign of public education. The farmer, consumer and industrial organizations throughout the state were informed of the extent to which their interests were adversely affected by the bill, and their opposition to it was organized. Mass meetings were held in key cities through the state, and an intensive publicity campaign reflected the mounting opposition to the bill.

The campaign culminated in the Spring of 1938, with the longest hearing ever held in the New York State Senate. Hundreds of representatives of farmers, consumers and businessmen appeared personally to oppose the tax. It died in Committee.

As a result of the success of this campaign, we were retained to oppose the Patman Anti-Chain Store Tax Bill in Congress and all such measures in state legislatures.

The Patman Bill provided such punitive taxes that its passage would have put the A. & P. out of business. When we were retained, 75 members of the House had already committed themselves to the Bill as co-sponsors.

Our employment was announced in a frank statement of public policy by the Company in a five column advertisement published in more than 1500 newspapers.

The Company frankly announced that it would not go into politics nor establish a lobby in Washington for the purpose of influencing the vote of any member of Congress, but would spend a substantial sum of money in a public education campaign to mobilize opinion against the Bill.

The Byoir organization immediately launched an intensive campaign designed to solidify the opposition of labor, agricultural, industrial and consumer groups to the proposed legislation. Hundreds of resolutions were adopted by such groups and publicized. A broad public relations program was undertaken to earn the support of all groups having a stake in continued chain store operation.

The fight culminated in 1940 in an open hearing lasting for six weeks before a subcommittee of the House Ways and Means Committee.

After the proponents of the tax had produced before the Committee twenty witnesses, practically all of whom were business competitors of the chains; 159 witnesses, of whom only 11 were chain store men, were arrayed against the Bill. These included 65 farmers and representatives of farm organizations, 8 prominent labor leaders, 50 representatives of manufacturers' organizations, manufacturers and marketing authorities, as well as representatives of consumer organizations, real estate boards and others.

It became increasingly apparent as the hearings proceeded that the proposed litigation was against the interest of millions of workers, consumers and agricultural producers throughout the country. The bill died in the subcommittee.

From that time until today we have opposed 247 anti-chain store bills, introduced in state legislatures. Only 6 passed and not one of those in states where such a tax was not already in effect. In the past 8 years not a single anti-chain bill has become law.

No new state has been added to the anti-chain roster since 1937.

Although 29 states have experimented with chain store taxes, only 16 states now have such laws on their books.

Since 1938 chain store taxes have been invalidated or repealed in 11 states.

Industry ices, s, and ffs

The price code and tariff problems besetting the manufacturers of floor and wall tile threatened the industry with extinction. We were retained by the tile industry to undertake the solution of these problems, as well as an increase in sales of its product.

Tile prices were decontrolled almost alone among building materials and amid the hue and cry for low-cost housing.

affecting

Code changes were obtained ~~in~~ 2000 cities.

Higher protective tariffs were granted to tile at a time when lower tariffs were being applied to some 3500 other items.

Hughes Senate Investigation

This case may be of interest to your Committee in its demonstration of our understanding of legislative processes and of the ability of a large specialized organization to capitalize maximum publicity possibilities of a situation in the news.

The Grain Allocation Case

In the Fall of 1947 the President secured a voluntary shut-down for 60 days of the distilling industry. This was followed by a law, effective until February 28, 1948, giving the Secretary of Agriculture power to allocate grain among the various distillers. This short-term bill passed both Houses of Congress unanimously.

Our client, Schenley, was adversely affected.

A bill was introduced to extend the legislation until the end of October. The bill passed the Senate unanimously. We concentrated our efforts in the House Committee. All of the rest of the industry, even those adversely affected, abandoned the effort to kill the bill and sought various compromises as to the amounts and allocations of the grain.

We made a straight fight for free enterprise and no governmental controls. Among other things, we ran three full-page newspaper advertisements attacking the bill. Although we accept no advertising commissions, the copy was written by this organization. The bill was defeated in Committee, 12 to 10. The legislation died.

We have given you the bare outlines of these campaigns, but if the Committee is interested we, of course, will be willing to show you in detail exactly how these campaigns are organized and carried out.

We are attaching hereto the organization chart of Carl Byoir & Associates, Inc.

If selected by the Committee to conduct this campaign, we would expect to charge a fee of $75,000, plus expenses, on an annual basis.

To insure a reasonable chance of attaining the objectives you have in mind, we think you ought to be prepared to make available for expenses somewhere between $200,000 and $250,000 a year, in addition to the budget for paid advertising.

The budget for these expenses, however, is at all times with the control of the client. While we submit budgets based on the proposed activities, the final determination of how much is to be spent and for what is made by the client.

No one can pre-guess such a campaign. Frequently, some activities are decreased or abandoned because they are not securing the anticipated results—others may be increased because they are securing greater results than anticipated.

We appreciate very sincerely this opportunity to present our qualifications to you.

Very truly yours,

Carl Byoir, Chairman
Carl Byoir & Associates, Inc.

Clients of

CARL BYOIR & ASSOCIATES, INC.

American Can Company
The B. F. Goodrich Company
Bendix Aviation Corporation
Chicago and North Western Railway System
Crosley Motors, Incorporated
The Great Atlantic & Pacific Tea Company
Hall Brothers, Inc.
Hughes Tool Company
Libby-Owens-Ford Glass Company
Lumbermens Mutual Casualty Company
Lustron Corporation
Minneapolis-Honeywell Regulator Company
Schenley Industries, Inc.
SKF Industries, Inc.
Tile Council of America
C. V. Whitney Interests

EXHIBIT P-5.

CARL BYOIR & ASSOCIATES, INC.
New York - Chicago - Washington - Los Angeles

INTRODUCTION

In presenting the following outline of the objectives, methods, procedures, organization and costs of the program for which you have retained us, a few introductory remarks are essential.

To achieve the results you are seeking, we plan to wage the kind of campaign we have employed successfully a number of times in the past. We see no reason to believe such a campaign will not be successful now.

But at the moment we cannot be too specific as to details or too dogmatic as to conclusions. We have not yet had time to assemble or assimilate all the data needed to assure the campaign an ever-increasing momentum.

THE OBJECTIVES

The objectives of the campaign are clear. They are: to obtain the passage, first in the legislatures of the states of New York, New Jersey and Ohio, and later in the other states of the Conference, of tax measures which will allocate to the heavy trucking industry its fair share of highway construction and maintenance costs.

Certain intermediate goals are essential to the attainment of the main objective. They are: first, to crystallize the resentment of virtually every motorist over the delays, inconveniences and perils of modern highway travel resulting from commercial heavy truck operation over public roads; second; to arouse the public generally to the need for more equitable and productive methods of financing public highways, and, third, to make the public conscious

of the benefits they themselves will attain from such measures.

The public is only a collective name for countless groups of people, many of whom have bonds of common interest. In terms of our objectives, our subsidiary goals include informing, organizing and activating as many legitimate, strong and politically aggressive groups as already exist or that can be brought into existence for their own self-interest.

The public and its separate parts must be informed by a purposeful barrage of continuing publicity. Our men in the field must organize the individual groups. Together, the publicity given the subject and the actions of the groups must be directed toward the legislators so that they will act in accordance with the demands of the voters.

Methods

As we see it, the whole program must have a basic appeal so broad that it will enlist the active support not only of the direct friends of the railroads, but, for example, a group of motorists conscious of the shocking hazards prevailing on our now inadequate and damaged highways, or taxpayers' organizations up and down the several states, or a group of tax authorities interested in improving state revenues, or the state grange and all others who can be shown where their own self-interests parallel those of the railroads.

In other words, the railroads are simply identifying themselves with a program in the public interest. They are taking a vital step to bring about the adoption of enlightened national transportation policies which will result in a more equitable and effective national transportation system.

As the largest single transportation agency within that system, the railroads have a legitimate and inescapable interest in the problem. Their investment in their own

facilities is the largest of any form of transportation. Their annual maintenance expenditures are the largest. Through property and other forms of taxes, they pay out in the aggregate an annual sum of money that more than compensates for benefits they receive and even defrays much of the public cost of other forms of transportation.

As trustee for hundreds of thousands of individuals and institutions with billions of dollars invested in railroad transportation, railroad management has a grave fiduciary responsibility. It is the responsibility for maintaining substance and earning power behind those investments. A group of managers who failed to participate in any measures, consistent with the public interest, which are designed to maintain the values behind those investments clearly would be shirking their responsibilities.

The railroads have a special interest in highways as part of the national transportation system. They themselves are users of the highways for short hauls and light truck operation. And no one can doubt that they already are contributing far above any benefits they derive as highway users.

A new national transportation policy is evolving. The railroads have a responsibility for helping to mold that policy in the public interest. The keynote of that policy must be that no part of the transportation system shall enjoy a free ride at the expense of any other; that all must share the financial responsibility in providing for the United States the finest possible transportation system.

In the campaign to follow, every action, from the major statement by the most important witness before a legislative committee on down to the briefest leaflet distributed in Hohokus, must be consistent with that platform.

Procedure

The pressures of everyday events are setting into motion forces that are already moving in the direction to be

taken by this campaign. Some 37 million motorists are finding their highways choked with commercial traffic. The hazards of the pleasure drive daily become greater. Heavy trucks are beating the pavements into bits. Mounting gasoline taxes are a constant source of annoyance. Motorists return to their homes irritated and ripe for action of some sort. But as yet they have not found a way to make themselves vocal or to express their resentment in legislation. That this campaign is moving with the trend is indicated by the number of motor club officials beginning to agree with some of the measures advocated by the railroads.

The ranking highway official in the nation—Thomas H. MacDonald, Commissioner of Public Roads—consistently holds the heavy truckers responsible for highway damage.

The recent Governors Conference created a body to draw up suggestions for uniform state highway regulations.

In widely separated regions, individual newspapers, feeling the public pulse, are starting reportorial series describing the damage being done to highways by overloaded trucks.

Individual state highway officials are voicing mounting concern over heavy truck damage while state finance bodies are calling for more taxes with which to build bigger and heavier roads.

Even municipalities are becoming aware that these trucks are damaging city streets and paying virtually nothing for the privilege.

It is our task to accelerate these spontaneously generated currents, and harness their force to the drive for remedial tax measures.

For this purpose we need all the allies with whom we can make common cause. We must ally ourselves with certain phases of AAA activity and intensify them. State and local motor groups must be stimulated to exert pressure on their legislative representatives. This will come from the realization that the program we are setting in motion will bring financial relief to the individual motorist.

Property owners, national, state and local real estate boards, local merchants, service and civic clubs, local taxpayer organizations, economy groups, labor and others must learn of the benefits to them of the proper allocation of highway costs and must be helped to take action in their own self-interest.

Liaison with state highway officials must be established wherever possible. We must focus more attention on the conclusions expressed in their conferences. We also must create more conferences, meetings, forums and discussion groups at the local level so as to obtain clear understanding of the highway problem.

The same thing is true of state finance officials. These officials must be made aware of the revenue potential of such expanding and prosperous industries as trucks and pipe lines.

City officials everywhere are under pressure for funds with which to create parking areas, repair and modernize main streets and other thoroughfares. So far the heavy trucking industry has been able to use publicly provided facilities at little or no cost.

Through granges, co-operatives, exchanges and other farm organizations, farmers must be organized to press for revenues from the trucking industry so that rural roads may be improved. Similarly, state, county and city school officials, teacher organizations and local PTA's must be rallied behind a drive which would free general tax funds now diverted to highways for use by the education system for the new buildings so desperately needed by the rapidly expanding primary school population.

The railroads are the nation's largest customer. This means that in every region of every state in which we operate, people can be found who sell goods or services to the railroads. We need your help in identifying these people and in enlisting them in this campaign in their own self-interest.

Publicity Themes

Publicity themes to be carried in testimony, newspaper stories, magazine articles, radio discussions, television shows, newsreels, speeches, pamphlets, local discussions, reference books, direct mail literature and paid advertising will come under such broad headings as: national transportation needs and studies; highway safety, hazards, damage and adequacy; consumer tax relief, state and city taxation, state and city finance, threats of socialization and as many more as can be found.

Organization

The major portion of the organization to carry on this campaign already exists in Carl Byoir & Associates. The campaign will be directed from the New York offices by Messrs. Byoir, Swinehart and Hammond. The account executive, Mr. Girdler, with the help of Mr. Schiff, another one of our vice presidents with long experience in legislative problems, will be in direct charge of the work.

Our Washington and Chicago offices will be active in carrying out the program. In the early stages, at least, a great part of the burden of carrying on the drive will fall on our specialized departments. For example, the magazine department has been told to start work on the long process of researching and writing major magazine pieces; the radio department has been alerted to write scripts and create events acceptable to the networks and the hundreds of local stations throughout the Eastern Conference. Our motion and still picture department has been told to collect, originate and distribute pictures illustrating the themes already mentioned. Our women's department must carry the themes to the printed pages of interest to women and create programs on these themes acceptable to women's clubs of all types.

Because of the scope of the campaign, it will be necessary, in addition, to have a relatively large number of people exclusively assigned to this operation.

The staff, as we see it, will consist of an able publicist as assistant account executive to coordinate the publicity efforts of the staff and the departments. Under him will be competent field contact and publicity men in New York, New Jersey and Ohio for the present, and later, in other selected states. These men will be backed up by a mobile group of writers to produce the volume of copy required and to move from point to point as special opportunities arise.

We also are assigning to this account a man with established governmental, legislative and editorial contacts to write speeches, pamphlets, magazine articles and other editoral matter for special purposes and outlets.

Costs

As to costs, we have endeavored to be completely realistic in our estimates. During July and August—the first weeks of our work—we are not fully staffed. Including all items of expense down to postage, we doubt that our August bill for expenses will much exceed $3,500.

We are submitting an estimate for the month of October as an example of the costs as the campaign gains momentum. With greater activity all along the line, with travel, organization work and contacts under way, the expense budget we expect will rise to around $20,000 per month.

We are also submitting a cost sheet for the month of January when we expect to be operating at a rate which will be sustained through the remainder of the contract year. Our estimate of expenses for the month of January is approximately $30,000.

On this basis, with a rising rate of costs from August to January and a sustained operation thereafter—we would now estimate total expenses for the year at approximately $274,190, plus our annual fee and whatever the Committee at the proper time may appropriate for paid advertising and other activities.

Exhibit P-5

ESTIMATE OF CAMPAIGN COST
FOR MONTH—AUG. 1 TO SEPT. 1

Salary Account Executive	$1,250
Salary Legislative Director	417
Salary Secretary (3 weeks)	159
Salary Staff Man (2 weeks)	269
Magazine Department (5 days @ $50 per day)	250
Research Department (5 days @ $30 per day)	150
Washington Office (5 days @ $55 per day)	275
Travel	350
Telephone & Telegraph	150
Stationery, Mats and Mimeo	200
Postage	100
Total expenses for month	$3,570
Fee	6,250

ESTIMATE OF CAMPAIGN COST FOR MONTH OF OCTOBER, 1949

Regular Staff		*Departments*		*Other Operational Expenses*	
Account Executive	$ 1,250	Magazine (10 days per month)	$ 500	Organizational expenses, forums, rallies, conferences, etc.	$1,000
Legislative Director	417	Radio (20 days per month)	800	Travel and Entertainment	1,000
Assist. Account Executive	1,000	Special Events (5 days per month)	200	Telephone & Telegraph	300
Magazine Man	1,460	Production (10 days per month)	330	Stationery, Mats and Mimeo	800
Picture Man	500	Research (15 days per month)	450	Postage	350
New York Field Man	834	Financial (5 days per month)	230	Booklets, Pamphlets and Outside Photography	1,500
New Jersey Field Man	834	Motion Picture and Television (5 days per month)	200	Clippings	150
Ohio Field Man	834	Photographic (10 days per month)	300	Committee Expense	150
Six Staffers (average $508 a month)	3,048	Washington Office (10 days per month)	550	Payroll Taxes	100
Six Steno-Secretaries	1,200	Chicago Office (2 days per month)	90	Total	$5,350
Total	$11,377	Total	$3,650		

Total Projected Campaign Cost for October, 1949—$20,377
Fee— 6,250

Exhibit P-5

147b

Estimate of Campaign Cost for Month of January, 1950

Regular Staff		*Departments*		*Other Operational Expenses*	
Account Executive	$ 1,250	Magazine		Organizational expenses,	
Legislative Director	417	(10 days per month)	$ 500	forums, rallies, conferences,	
Assist. Account Executive	1,000	Radio		etc.	$ 4,000
Magazine Man	1,460	(25 days per month)	1,000	Travel and Entertainment	3,000
Picture Man	500	Special Events		Telephone & Telegraph	750
New York Field Man	834	(5 days per month)	200	Stationery, Mats and Mimeo	1,500
New Jersey Field Man	834	Production		Postage	750
Ohio Field Man	834	(20 days per month)	660	Booklets, Pamphlets and	
Six Staffers (average $508 a		Research		Outside Photography	3,000
month)	3,048	(5 days per month)	150	Clippings	300
Six Steno-Secretaries	1,200	Financial		Committee Expense	200
		(5 days per month)	230	Payroll Taxes *	300
Total	$11,377	Motion Picture and Television			
		(10 days per month)	400	Total	$13,800
		Photographic		*January Taxes	approx. $ 300
		(10 days per month)	300	April Taxes	" 1,500
		Washington Office		July Taxes	" 400
		(5 days per month)	275	October Taxes	" 300
		Chicago Office			
		(4 days per month)	180		
		Total	$3,895		

Total Projected Campaign Cost for January, 1950—$29,072

Fee— 6,250

RECAPITULATION

July 1949	$ —0—
August 1949	3,570.00
September 1949	11,975.00
October 1949	20,377.00
November 1949	24,725.00
December 1949	24,725.00
January 1950	29,072.00
February 1950	28,772.00
March 1950	28,772.00
April 1950	30,272.00
May 1950	28,772.00
June 1950	28,772.00
To July 15, 1950	14,386.00
	$274,190.00
Annual Fee	75,000.00

EXHIBIT P-21.

Dear Pat:

Here we go down the rocky road to LaPlatta research. I've probably got a lot of stuff you know already because I don't know *all* that you know already, but I hope there's some here that will be new. It's put down by source.

Hale, AASHO

A test on trucks vs. roads is definitely going to be run in Idaho. Sponsors are western Assoc. State H'way Officials. Road now being built (bituminous). Should be ready to start in late spring. The truckers will have to cooperate; they don't dare stay out. (Note: others say he may be over-optimistic; it is possible the testers might end up having to buy trucks, but not probable.)

Two other tests are in the talking stage, one to be run by Mississippi Valley Assoc. State Highways Officials, other by Southeastern ASHO. Another possibility is that these two would combine into one big million-dollar one. The Highway Officials are not the only sponsors and bill-payers, of course. All the same groups that joined in on Md-One are expected to again, and the hope is that there'll be some federal money too, if it is decided to try to run a mammoth test.

The truckers sometimes charge that a trouble with the Md. test was the portland cement road, ~~that cracks, etc. wouldn't have~~ as you know, appeared if it had been bituminous. Well, ~~the Idaho test will be bituminous so they'll have their innings there. Meanwhile,~~ Mr. Hale observed, the turn-arounds in Maryland were built of bituminous and they showed worse beating than the highway *and* the cost of maintaining them was very high. He admits this is not conclusive evidence; the turnarounds might not have been too well engineered, the radius might have been to small, but he throws it in for whatever it may be worth.

What the truckers won't get through their heads is that highway engineers have to build roads for a life span of 20 to 25 years, at least; bridges for 50. Once you've built the road for that term, you have to restrain the usage of it for the same term. The truckers want to be able to change every couple years to bigger, wider, heavier, longer, higher or some other truck; no highway engineer in the world can foretell all the improvements they want and even if he could, he couldn't get public opinion—or dough—to build strong enough roads to withstand every "improvement" truck manufacturers may come up with. Many roads now used by truckers were built twenty years ago; for financial and other reasons they couldn't have been built any better then and present truck traffic over them has to be restricted to what they'll take or there won't be any roads there at all.

We have built 20,000 miles of road since close of war; need 231,000.

Now—here is a tricky point that seemed to me interesting. Mr. Hale says there are 8½ million trucks in use today, but only 300,000 of them or, if you want to be generous call it 500,000, are the heavy trucks that cause all the shouting. Explicitly, he said, "Only 200,000 vehicles in use today have a potential axle load of 27,000#". (AAA was surprised; thought that a low figure; maybe it should be checked.) At any rate, his point is this: Those who own or otherwise profit from half a million trucks in the U. S. are trying to force upon the owners or 8 million trucks and of 44 million passenger cars and, to be sure, the general public—the expense of building roads strong enough to maintain the half million minority.

He had no special ideas how to make the half-million pay for their use. Thought Oregon's system of taxing for ton-miles run worked OK.

From Mr. K. B. Rykken, American Automobile Assn.
(to be sent you tomorrow)
(Copies marked "A" ^ came from him: I went to AAA because I had a good in there. I don't have the feeling

they are vitally interested in the Md. tests or any others, though I may be wrong here. They're surely smart apples, and they have have been in this fight with two fists without my knowing it. However, as I started to say, my impression is somewhat that they are anti-truck, ~~all right,~~ but not aiming to do much about it.)

I asked Mr. Rykken how the ordinary little truck driver with the traditional wife and kids felt about all this. His opinion is that the drivers who lease their trucks and are therefore more or less their own bosses (and many fall into this category) are in favor of the tests. They don't like overloading because it breaks down their trucks and causes repair bills, which they have to pay. They get paid by mile; not pounds. The lighter the load, the easier it is to drive, particularly in the eastern terrain where we have hills, curves and bad visibility. This goes for the "leased" truck as well as the plain driver who works for a company. In other words, it's his opinion that the drivers, if they could be reached, would be in favor of the Maryland test showing that lighter loads should be used.

Mr. Rykken pointed out that truck owners and trucking companies are not engineers (he is, worked for Minnesota Highway Commission). They're forever howling that the roads, not the trucks, are at fault, but the truth is they don't know anything about building roads so how can they be sure the fault is all the roads? (He did not know the Truckers Association has now hired a highway engineer.)

Rykken has the feeling that the truckers (meaning the Amer. Truckers Association) has, or at least is beginning to, come to the conclusion that they have a bear by the tail—that some of the leaders now realize they're not going to be able to convince the public that trucks are *not* at fault in the deterioration of roads and that, therefore, they are switching their attacks to the U. S. highway system.

In this campaign, truckers have seized on the sufficiency rating formula and are trying to persuade state

legislatures that road construction and renovation be concentrated on the main arteries of a state to bring them up to adequate sufficiency rating. This rating is based on structure, surface and safety of a road and I assume you know all about it. The concentration of road money on main highways would, of course, be great for the truckers who use them, but a little tough on the residents of the state who don't happen to live on or use them and would prefer to have their state's road money more widely distributed.

Another trouble with the trucker's "solution", if you can call it that, is that to bring the highway system up to their idea of adequate sufficiency rating would require expenditure of at least 6 billion dollars a year for 15 years. We are now spending a little less than $3 billion per year on road construction (not counting maintenance).

(Mr. Rykken's point about trucking assoc. concentrating their fire on the roads reminds me that ATA told me they are reprinting Collier's recent editorial "Clear the Roads" or whatever it is as a give-away. It's the editorial about steel rationing.)

Rykken pointed out that ATA does not have rigid control over all its members or member groups. He thinks that only some of the top guys are ready to admit defeat in the battle for heavy weight allowances; down the line many are still fighting it, i.e., working on state legislatures to up or at least not to down maximum weights.

Rykken said, incidentally, that the battle between the truckers and other interests is much less bitter in the west than the east. Roads there were constructed later than the eastern roads so often are better and can hold up under 22,400 axle loads. (Climate and drainage conditions are better for roads in some parts of west too.) This western "sweetness and light" does not indicate, he said, that the truckers have at least *some* validity when they contend the type of construction is at fault in road destruction rather than the type of trucks—but the fact still remains we have

to live with the roads we have in the east here and now, not the ones we wish we had.

Rykken is annoyed at the truckers assertion that the wrong type of trucks were used in Md-One. The idea was to test axle loads, not gross loads, and that is just what was done. The only reason, for example, tractor-trailers were not used is that they would have substantially increased the cost of the turnarounds. When the results wanted could be obtained just as easily and less expensively with the type used, it would have been foolish to use tractor-trailers and anyway, he's convinced, the results would have been the same.

Rykken says truckers contend maintenance was not sufficient, that they should have gone in with bituminous to take care of the pumping as soon as it started. (I haven't run across this argument from the truckers yet but may when I see them again tomorrow so look to the end of the story for more on this, please, if any). Rykken contends that the maintenance was sufficient and better than most roads would get in a similar six-month period. (I asked him and Hale too how the $2,000 maintenance and $28,000 repair bills would compare with ordinary road costs but both said this was too technical for them and could best be answered by the Bureau of Public Roads boys; since you saw them, I assume you've covered it.)

Rykken threw in that the asphalt people are delighted to help truckers on their fight against the LaPlata tests. He said that "The Ghost of John McAdam" which appeared comes to you tomorrow in *Fleet Owner* and of which a copy ~~is attached~~ was written by a public relations man at ATA; he wouldn't tell who, but seemed quite positive. Since the article was presented more or less as an impartial (but authoritative) article in the Fleet Owner, it warn't cricket for an ATA man to write it—if he did—and might be evidence that the asphalt boys and truckers are in cahoots. However; in "Road Building —Taxpayer's Viewpoint", another Fleet Owner article also

being sent
~~enclosed,~~ the truckers say they don't give a damn what roads are built as long as they get to ride 'em, or some-such like that. (I haven't read it; you'd better.) (I've now read it and am still confused; how are you?)

It seemed to be Mr. Rykken's opinion, if it interests you, that asphalt roads are cheaper to build, yes, but that the maintenance cost goes up at a steeper ascending scale than cement. In other words, first year, no problem, fifth year, asphalt higher than cement, tenth year much higher, etc. I would say he probably knows what he's talking about . . . but since I don't know the subject I could be wrong.

Ludwig (Call me Curly) Caminita

This is strictly from jerktown. Waste of time, but since it's your time, here goes. "Siddown, I getya cup-caffee, have a cigrette, listen, here's how I work, stirctly on the squre see. I tellya the truth, everything I say you can check see, that's how I do public relations, see. Listen, it's a plant. I think I know who's behind it but I can't say. I'd just like to know who got to those guys. Harman Nichols, known him for years. Haven't gone near him since I got this trucking account, 7 months ago. Some day I'll see him and I'll say Harmon who the hell paid you to write those stories anyway? Geeze, wish those truckers would let me take the wraps off. I'd prove the Maryland road was better after the trucks ran over it than before. I'd moider them. Those truckers won't let me take the wraps off. Best account I've ever had. I love those truckers. They won't let me take the wraps off. I could really prove a few things about that test, see."

The gentleman has the book *Show Biz* on his desk. Perhaps he'd just been reading it. I can't think the Truckers Assn. takes him too seriously. For instance, he didn't even know they had made the movie described below.

American Trucking Assn.

I saw Bob Test of ATA twice and the story has two parts. First, my impression is he's a pretty good joe who

wishes he has a different job. On Thursday, I learned the following three things from him but they must not be used for publication without verification for reasons explained further. They are:

(1) The truckers have taken a color movie showing Bob Test driving along the LaPlata road, test part and also couple of miles on either side. There is a glass of orange juice on the dashboard and it does not move more perceptibly on un-test section than on test. This is to prove that the trucks didn't ruin the road. (Yea, I know and they know the shots were taken after $28,000 repairs but that is not part of the picture.) The strip also shows the full stretch of test road after repairs compared with other stretches of old 301. Made much of is the Speed Limit 50 sign at the beginning of the test section. If the road were ruined would the limit still be 50? In my opinion, the test section has multiple marks of repairs that will have to be doctored if the movie is to show what the truckers want it to show. Mr. Test said there were no plans yet how to use it, if any.

(2) Truckers are collecting pictures they are planning to put out in a brochure to show Old 301 Ain't Dead. Pix, as you will guess, show parts of the test section which look better than roads in constant use all around the U. S.

(3) Truckers have hired a highway engineer from Topeka, Kansas, name Wm. Arndt. He went on the job Monday, was down at LaPlata Thursday. You can surmise what they are trying to cook up with him. I meantiond Arndt to Daniel, Scripss Howard, and he was quick to venture that this highway engineer, .. any, must be broken down, discredited, or have holes in the head.

Now, reason you should not publish . . . "Truckers have put out a slick color movie hopped up to show . . . accompanied by brochure . . . hired a phoney . . . etc." None of these things are out yet. Premature pub-

licity would cause the truckers to withdraw and howl lies. They may be withdrawn anyway. First two still in planning stage and as I tell later on, Arndt may be fired or disgugsted by now.

What I suggest is that, if your writer wants to use any of these points, he call at ATA himself near publication time to check. He can call me first and I'll suggest a way to word the questions that I think might work and would also keep me out of it. I may be the only outsider so far who's seen that movie as it had just ceom from the developer. So don't get me in the middle.

Other points I picked up, mostly from Mr. Test:

(1) Truckers contend there is no more damage, and perhaps less, on the road section which adjoins the turnarounds and which took twice as much traffic as other parts. (Draw yourself a picture and you'll see how. Their version is "40 years of traffic on these sections and they weren't damaged it all; it's all in the roads, not the trucks."

(2) The $28,000 repair bill has not been properly itemized as to what was due to deterioration of road because of the test and and what wasn't. It includes replacing slabs taken out to be tested, whether or not they needed replacing. It includes building shoulders where they'd never been before. During the 6-month traffic cracks were patched with blackstrapping instead of properly so they required more expensive repair in the end.

(4) And over and over again, the road is in good condition now and anyone who says it isn't, lies.

(5) The opposition, all thieves (by name, Burea of Roads, AASHO and Highway Rewearch Board) jumped the gun on feeding nawty propaganda to the press in spite of agreement among all not to release anything until all the results and final reports were in.

(6) The tests were not run on a scientific basis. Subsoil was not adequately tested in advance. More tests were

made on it after the test than before and the only reason for this was to do the truckers in.

(7) There is a section of road recently built in Ohio which fell in before even one auto went over it. (Is this to answer Laushe? Don't ask me where the road is; I asked ATA but got only evasive replies.)

(8) My impression is that Truckers and asphalt people have merged in at least a temporary or shotgun wedding. By now, I've heard it dropped too many times that "I personally prefer to drive on a blacktop" to believe it's just personal preference.

As I said, I saw Mr. Test twice. Anything I learned I got the first time, Thursday. I asked then if I could see Mr. Arndt, the new highway expert Friday. He said sure, confirmed this when I called for an appointment Friday morning. (From Scripps Howard) When I arrived at ATA fifteen minutes later, things were so different. Test had evidently conferred with a man named Russell, who Test told me was assistant director of public relations, and Russell wasn't letting me have any of Arndt. Perhaps the guy wouldn't buy their story when he went to LaPlata Thursday and had already resigned. No, that couldn't be, because Test told me Friday morning he had checked with Arndt and he would be glad to see me. But Russell wouldn't let me by. His excuse, I was only a researcher, they couldn't waste time on researchers, if the writer wanted to see him perhaps he could arrange, etc.

I should explain here I don't think Test had a clear idea of where I was from. (Damn sure he didn't.) I'd gotten to him through Caminita and Test never asked any questions. What Caminita told him I dunno. I had told Caminita that I was doing research for a magazine article, that I used to work for Collier's full time and now was a free lance researcher. He could have translated this to Test that I was a Collier's editor (if I'm any judge of Caminita mentality). (By the way, he knows Gerry Dick

and asked about her; now how would that be?) But as I was saying, when Russell got me he said who was I working for and I said collecting info for a writer in NY who might want to do an article on the Md Test for Collier's, SatEve or whoever he could interest. This gave him the excuse he wanted to say no researchers thanks. I wish you'd have OK'd my saying I was collecting for C. Byoir; then I could have let go with a few how do you expect to get a decent press when you won't give and everybody else will?

Despite all this, I would definitely recommend that your writer go to ATA to try for information. First place, it'S an impressive building, tasteful decorations green and copper, just putting air-condition in, sign politely saying "Welcome to ATA, May We Help You", award from American Public Relations Association, 1945, in a show window. Shortly, quite a show.

One final thing from the Truckers, I asked four or five times how they felt about the Idaho tests coming up and still don't know. Such answers as, "We'll hope that if the tests come off they will be allowed to show true results not preconceived ideas of what trucks do to roads." If I were running the test and *if* the truck manufacturers supply trucks I'd sure look them over to see if they'd phonied to axle loads or somesuch.

Daniel, Scripps Howard

This is a very nice and fairly young reporter, quite busy so I did not take much of his time. He said:

(1) Atlantic or Harper's preparing story on same subject; someone came to see him.

(2) In answer to your question, truckers haven't tried to "get to him". They won't speak to him. He used a quote he got from one of their legal men; they denied it and the war is on.

(3) Daniel's comment: "Truckers are a mendacious bunch; listen to their story but don't believe anything they say."

(4) It is all an economic problem. Their volume of business doubles every five years and their profits come from overloading and keeping down expenses. They intend to keep it that way long as they can.

(5) The LaPlata road is in terrible shape, even after the repairs. It pumps.

(6) The association has a book called Fighting Facts circulated to truckers, truck dealers, etc. It tells how to carry the word down to the local press and local legislator. There are for example form letters to meet every emergency. The trucking firms are supposed to write, Dear Editor, that story was unfair, not based on facts, etc. . . ." There are also hints about influencing legislation. The "facts" presented in the brochure come from authorities who are phoney lobbyists. Needless to say I hoped there would be a copy of the book at ATA that I could lift, but there wasn't.

(7) Truckers seem to have won Senator Johnson over to their side; Daniel doesn't know how.

(8) You will recall the truckers boast about Maryland legislature refusing to lower the 22,400 axle load limitation to 18,000 after the Md Road Tests. I asked him why. He said the truckers did this by pure lobbying. They moved in when the legislature did, in Annapolis, and not a week went by when they didn't entertain the guys, royally. They brought witnesses: an example is a GI driver who said he'd be ruined if the new legislation went through. The truckers do a lot of work for the legislators; others don't make themselves heard on the road subject. The railroads used the same tactics in the 1890's and got their innings. Now they're discredited; any railroad man appears in a

state capitol and whatever he's for will be voted against. (Nice story, if true, but I doubt it.)

(9) Truckers legislative policy is to get one state to allow 22 thousand pounds, move to the next and say your neighbor does why not you. By this methos all New England allows 22,400 or some such figure. (But you probably know all this and anyway New England roadbeds are better than others.).

(10) Richard Newburger has done some extensive writing on tactics he observed truckers used when he was in the Oregon legislature.

EXHIBIT P-24

Confidential

Memorandum to: Department Heads

From: Reynolds Girdler

Re: Objectives of Eastern Railroad Account

FOREWORD

For the past twenty years, or ever since the rise of the airplane, the truck and the automobile as mass transportation agencies, the country has been groping for a new national transportation policy. The old policy—if such it could be called—concerned itself with only one medium—the railroads. The policy was founded on the idea that the railroads had a transportation monopoly, and should be regulated as such.

The facts have long outgrown the theory. The laws and regulations of the land continue to treat the railroads as though they were a monopoly; meanwhile both freight and passenger business moves in increasing volume over the highway and through the air at public expense.

But recently government officials and transportation authorities have become increasingly active in agitating the need for laws and regulations that would grapple with the present rather than with the historic past. Both Roosevelt and Truman have called for a new national transportation policy that would regulate and tax all agencies equally. Congress itself has declared the national policy to be: assignment of that portion of the transportation burden to the agency best fitted for it, with equality of treatment for all. This means airlines for speed, trucks for short-hauls, railroads for long hauls. The Hoover Committee has recommended the creation of a national transportation authority, and, pursuant to that recommendation, committees in

both the House and the Senate are now seeking to develop the engineering and financial data from which to construct a policy that would give the nation the most efficient transportation system.

We have been retained by a special committee of the Eastern Railroad Presidents Conference, an organization of some 35 railroads with business in seventeen eastern states, to develop a public relations program that would give to the public a better understanding of what constitutes a modern transportation policy and what measures should be taken to give the American people the world's finest transportation system. Actually, if some omnipotent engineer could, overnight, impose on the nation the ideal transportation system, the financial problems of the railroads would be at an end. This is true because the railroad remains the most efficient form of transportation. Example: the railroads can haul 100,000 tons of freight from coast to coast at a cost of 3,500 man-days of labor. It takes 90,000 man-days to do the job by truck and 50,000 man-days by plane.

Under the present and outmoded policy, the railroads are prevented by tax laws, regulations and sanctioned practices that have their roots in some long-forgotten special situation, from operating at their true efficiency. They spend almost a billion dollars a year in maintaining their own rights-of-way and equipment. In addition, they pay taxes on these facilities amounting to another one billion dollars annually. The public, through taxes, supplies the airlines with subsidies and terminal facilities and supplies the trucks with highways maintained largely at public expense.

The ideal transportation policy leaves plenty of room for growth by both the airlines and the trucks. Both have an essential position in the transportation picture—the planes for speed, the trucks for short hauls, the rails for long hauls.

IMMEDIATE OBJECTIVE

Between the two World Wars, federal and state governments, in the absence of a modern, comprehensive national transportation policy, lavished more than $40 billion on a national system of highways. True, these highways were primarily provided for the motorist. But they represented an outright gift to the trucking industry of free roadways over which they could do business at public expense.

But with the outbreak of war, as you all know, the trucking industry practically collapsed as a transportation agency. The railroads carried 97 per cent of all organized troop movements, more than 90 per cent of all military freight and more than two-thirds of all freight of all kinds, civilian and military.

Now the Federal government and the several states are embarking on another costly road building program. In the absence of an overall policy, special governmental departments have blue-printed major development programs which would add to the free facilities of the big trucks—and add to the taxes the motorist will pay, the taxes the wage earner will pay, the taxes the property owner will pay.

Our immediate program, therefore, calls for the widest possible publicizing of what these ambitious highway programs mean to the average citizen. For the present, we will concentrate on the states of New York and New Jersey. This means that the voters of those two states must be made aware, through us, of the physical size and financial burden of the highway situation within those states.

Specifically, we must write all publicity in terms of the self-interest of certain groups. This publicity must be aimed directly at Motor Groups, Real Estate Boards and individual owners, Economy Groups, Service Clubs, Safety Groups, City and County Officials, Rural Road Improvement Groups, and all others *who have something to gain if the burden of financing the highways can be transferred from the individual citizen and the individual motorist to those who alone profit by it—the heavy trucks.*

In this campaign, we are moving with the times. The tide of public action and public opinion is running with us. Already such groups as the AAA, which traditionally has provided the trucking industry with a large crowd in which it could conceal itself, is alarmed at the damage being done to the highways by the heavy trucks, and at the substantial increase in the numbers and sizes of heavy trucks using highways designed primarily for light passenger car travel.

At the last Governors Conference (June, 1949) the problem of truck damage to highways, proper state regulation of trucks, and the even more important problem of where to find the revenue with which to build needed roads, occupied most of the agenda.

In widely separated regions, individual newspapers, feeling the public pulse, are starting reportorial series describing the damage being done to highways by heavy trucks, and calling for appropriate action by state governments.

State highway officials are voicing mounting concern over heavy truck damage while state finance bodies are calling for more taxes with which to build the bigger, heavier and more expensive roads which alone can support the pounding of heavy trucks.

Even municipalities are becoming aware that these trucks are damaging city streets and paying virtually nothing for the privilege.

It is our task to accelerate and broaden these spontaneously generated currents.

CATEGORIES OF PUBLICITY

The subjects with which our newspaper stories, magazine articles, pictures and radio programs will be concerned are these:

National Transportation Policy

What it should be; agencies concerned; groups affected; specific roles of competing carriers, etc.

For our purposes, any story, radio program, picture or project on the general subject of national transportation which would dramatize the crowded highways, the damages being inflicted on highways by heavy trucks, and the heavy cost such roads are imposing on the citizen as distinct from the trucker, would be welcome.

HIGHWAY CONSTRUCTION COSTS

Nationally, it has been repeatedly estimated by public roads officials and others that the nation needs to spend $20 billion over the next ten or fifteen years to bring existing roads into proper shape and to add the needed additional mileage. Since these officials are constantly sounding off on this theme, the subject of highway construction costs is a lively one news-wise. Therefore, this category should be an especially productive one for us. Some stories on this subject naturally suggest themselves: Heavy Trucks Add x-Billion To Cost of Modern Highways, Says Road Expert; State's Highway Debt Soars as Road Building Program Starts. In every instance, such stories should be vehicles for these ideas: that highway costs are mounting, that the heavy truck is responsible for most of this added cost, that the cost is being placed on the individual motorist and taxpayer rather than on the heavy trucker, and that heavy trucks should begin to pay their fair share of the burden.

HIGHWAY SAFETY

This is a subject of wide appeal and should give us plenty of scope for the ingenuity that distinguishes good B&A departments. Trucks now account for about 15 per cent of all highway accidents. Their accident-to-mileage ratio is higher than any other class of motor vehicle. Principal truck causes of highway accidents

are: slow progress uphill, thereby piling up lines of impatient motorists; too great speeds downhill in effort to gain momentum for next hill climb; faulty or inadequate brakes; illegal and excessive loading; excessive speeds in effort to maintain schedules. Who do we get to say these things for us? How can we get such people to say them for the press and radio? How can such facts be shown picture-wise?

HIGHWAY DAMAGE

This is also a lively current news subject. During the war, the states voluntarily abandoned their policing of truck weights. (Each state has laws governing the total maximum amount of weight allowed for a truck fully loaded, and governing the per axle load). As a result of the wartime emergency, overloaded trucks ran wild and beat our highways into bits. This is one of the principal causes of the heavy repair expenditures every state is being required to undergo. The habits of lax enforcement have carried over to the present from the war period. As a result, damage to highways is continuing, and is a continuing source of friction between state highway officials and the truckers. Local motorist groups, too, are beginning to complain. We must publicize the physical extent and the financial extent of this damage, and make people realize that the trucks are causing most of the damage. Once again, who can we get to issue these statements? How can we generate pictures and picture-stories of this damage?

STATE REVENUE AND EXPENDITURES

We are already releasing, through a group dedicated to economy in state affairs, stories on the mounting costs of New York State's highway program with appropriate plugs for the role of the heavy truckers, and have a number of other stories carrying the same

theme that we will issue in a steady stream through this group. But this work needs expansion. What other individuals or groups such as transportation experts and motorist groups, can we utilize for alarm over the conditions of our highways and the costs thereof?

GENERAL TAXATION STORIES

Taxpayers Burdened by Highway Costs, Tax Officials Probe New Revenue Sources, Railroads Biggest New York State Taxpayer, State Rail Taxes Exceed Highway Revenues are only four stories we are writing now and will release through a group with which we have made proper arrangements. However, there are other forums. Can we get such topics discussed on the air? What type of individual would you need to assure such a radio discussion? What type of feature or editorial outlets could use general taxation stories?

You can see from the foregoing that this account is utterly unlike the conventional one. Here we do not have a client for attribution. Of course, we will release some stories under client attribution, but they will be of lesser propaganda importance than those we can generate from motorists, property owners, taxpayer, farmer or women's groups. In sum, we not only have to create publicity ideas; we also have to go out in the field and create the groups and occasions so that those publicity ideas will become realities.

In addition to this memorandum, we can supply each of you with research books which will give you a much better understanding of the material available to you. These books also will give you a much better understanding of the problem. They are big books. They take time to read. We

will willingly give you budgeted time for study of this material, so that you can get ideas for stories, radio and television programs, pictures and projects.

The Magazine Department has already digested much of the material and is deep in the middle of three articles. Research also has done a substantial amount of work. But since we have only one copy of each book, it will be necessary to pass the copies from department to department. Depending on your own schedules, will you phone to let me know when you might have time to start the absorption process?

One more word: if you are asked about the nature of our work for the railroads, you need only say that we are trying to develop a public relations program to speed the adoption of a more modern, enlightened national transportation policy as already defined by Congress and two presidents.

To get started, could each of you:

(1) Study the reports that we have

(2) Give us suggestions for stories to be prepared for media in your field

(3) Outline to us the people or material you will require to do a particular job

(4) Meet with us at a time mutually convenient to discuss how your department can fit into the picture

(5) Do not approach any outlets until you have first discussed the idea to be submitted with us

EXHIBIT P-29.

CARL BYOIR & ASSOCIATES, INC.

Eastern Railroad—Transportation Committee

PRIMER FOR THE STAFF

Our Client

The Eastern Railroad Presidents Conference is our client. The group is composed of the presidents of most of the railroads east of the Mississippi and north of Virginia. Included in this group of railroads are the giants: Pennsylvania, New York Central, C&O., B&O., NY, NH & H, etc. . . . altogether more than 35 railroads.

The Conference maintains an official address at 230 Park avenue in the office of the president of the Conference, and president of New York Central System, Mr. G. Metzman. The working office, however, is downtown at 143 Liberty Street. It is listed as the office of the Committee on Public Relations of the ERPC.

As you know the railroads of the United States have a strong national organization called the Association of American Railroads, with offices in Washington, D. C., and regional offices in other locations, including New York. Why, then, the ERPC? Simply because regional problems necessitated such an organization in addition to the AAR. The Western Railroads have a similar organization, as do the Southern Railroads. And further down the line, the railroads operating in any one state have usually joined forces in state organizations, such as the Railroads of New York State, to study and lick problems peculiar to the railroads in that state. As an example, the railroads in New Jersey have joined together to fight property taxes imposed on them which are nine times the national per-mile average, and the highest in the nation.

Actually, though we work for the ERPC, we are responsible to a committee whose official title is Eastern Railroad—Transportation Committee. This committee is composed of sub-committees called Counsel, Research, Policy, and Public Relations. The Counsel sub-committee is composed of various legal big-wigs from a number of the railroads, whose function is to determine the legislation needed. The research sub-committee is composed of a variety of railroad officials, including tax agents, freight traffic agents and the AAR's regional director of the office of Competitive Transportation Research, whose job is to gather the facts. The Policy committee is composed of the presidents of a number of the railroads within the ERPC, which makes it, in practice, the actual Eastern Railroad—Transportation Committee. Chairman of the Policy group is Mr. W. J. Tuohy, the President of the C&O Ry. Finally there is the sub-committee on Public Relations, which is the group we report to. It is chaired by Tom Deegan, V-P, Public Relations of the C&O Ry., and has in its membership the public relations directors of a number of railroads, plus Tommy Ross, p.r. counsel for the Pennsylvania Railroad; Mr. J. M. Fitzgerald, the executive director of the working office of the ERPC, and Mr. J. G. Lyne, editor of Railway Age.

The Job Ahead

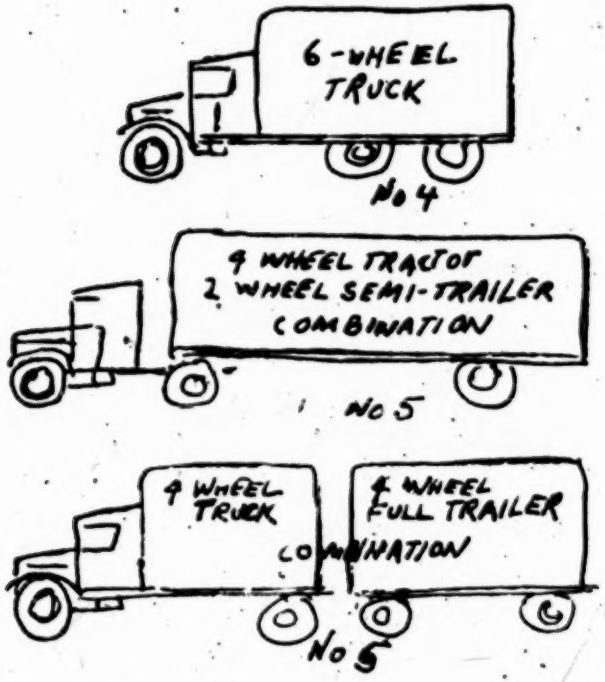
See CB&A's presentation to the ERPC and Reyn Girdler's memo to the staff on objectives.

About Trucks

There are all kinds of trucks . . . in size and body type. Your cleaner delivers your clothes in one kind, the dairy uses a different variety, the coal man still another. Farmers have their particular kind, as do delivery and trucking firms. Roughly, truck fall into five classes, thus:

1. Single unit trucks, panel and pick-up, weighing (empty) less than two tons. (92% of the two million farm trucks are 1½ tons or less.)
2. Other single unit, 2-axle, 4-tire trucks, weighing (empty) approximately 2½ tons.
3. Single unit, 2-axle, 6-tire trucks, weighing (empty) 3½ tons.
4. Single unit trucks with 3-axles, weighing (empty) over 6 tons.
5. Combinations, such as truck-trailer (truck permanently attached to trailer), tractor-trailer (power unit, called a "tractor" is separate from trailer), and the tractor-double trailer, etc., weighing (empty) over 9 tons.

Some Kinds of Trucks



Altogether there are more than seven million trucks registered in the United States. But our sole interest is in the giants of the highway . . . the highway boxcars . . . which represent only 4.7% of the trucks registered. These are the trucks in the last two groups (above). We're going to call them the 5 PERCENTERS, to capitalize on the nefarious meaning given that term as a result of the recent Senate investigation.

By what standard do we limit our interest to the top 4.7% of all trucks? Well, essentially, they are the group used by the inter-city and long distance truckers, for they are big enough to gross load to legal highway weight limits, or even overload. Their unloaded weight is 12,000 pounds or over. That's six tons net weight. The average passenger car weighs a bit under two tons.

There are other reasons for sticking to the upperweight 4.7%. They are the ones competing with the railroads. And they are the ones pounding the highways to pieces. Further, as long as we stick to the 5 PERCENTERS we can tear hell out of such fantastic American Trucking Association claims as: "The truckers of the U.S. paid $1,088,000,000 in 'user taxes' in 1948, or more than a third of all taxes paid by highway users, even though only seven of the 43 million motor vehicles registered are trucks." See what they do? To make a good story they lump all trucks together, including the farmers' trucks, the milkman's truck and the light panel pick-ups. But the problem our client has doesn't concern itself with the mikman's vehicle. He isn't competing with the railroads.

We have, so far, talked about unloaded truck weights. But as you go over the material on trucking, you are going to find frequent reference to "axle load." Realistically, each of the two sets of wheels on your two-ton automobile carry their proportion of the load, or one-ton per set (or per axle). If your car runs over you, you will not be subjected to the total two-ton weight all at once, but rather one-ton as the front wheels pass over you, and one ton as

the back wheels go over. Ditto any one portion of a highway. So highway engineers are primarily concerned with axle weight. (Highway bridge engineers, however, are concerned with total weight). Thus you will find that most states base highway weight limits on axle weight. With few exceptions, it is 18,000 pounds . . . a weight limit recommended by the Public Roads Administration (now called the Bureau of Public Roads of the U.S. Dept. of Commerce), the National Association of Highway Officials, the American Road Builders Association, and, lately, the AAA. This limit means that a three-axle truck can have a legal gross weight of 54,000 pounds, or 27 tons. Or a two-axle truck is limited to a gross weight of 36,000 pounds. Most states, as we said, have such a recommended limit. Some, like New York, allow more. (In N.Y., the axle weight limit is 22,400 lbs.) Wisconsin and Virginia allow less. Many, in addition, have a limit based on a formula which takes into account the distance between axles, and most states have an overall maximum gross weight. The Trucking Association continually tries to get these weight limits raised. But lately even the highway engineers, watching the big trucks pound their work to pieces faster than they can maintain it, have fought increases in weight. Most highways now in service were not built to stand even the legal weight limits. And recently built highways have to be built stronger to cope with the heavy weights, which makes them more costly. Yet, despite all this, the early days of an enforcement-of-weight campaign in a state will find approximately 25% of the trucks grossly overloaded beyond the legal limit. Enforcement is lax because it is a job beyond the manpower of most state police forces. So trucks pile on overloads which mean more profits to them and more damage to the highways.

You will also find that trucks are limited in height, width and length. Here again, the Trucking Association tries to get the limits increased.

Another confusing set of terms you'll run across concerns themselves with regulatory descriptions of motor trucks. You'll find reference to "for hire," "common carriers," "contract carriers" and "private carriers." And then you'll find the "exempted for hire carriers." This is what it all means:

FOR HIRE refers to all trucks except "private" trucks, and is the group, in toto, we are interested in. It is a term used to describe "common" and "contract" carriers under regulation or "exempted."

COMMON CARRIERS are trucks operating within one state or across several states which secure franchises of "public convenience and necessity" like the railroads. They must file their rates and operational routes for approval, are sometimes subjected to regulation of hours of service, must carry bonds and insurance, keep specified records, meet certain safety standards and stand ready to take on (*essentially!*) all products of all shippers. If they operate across state lines they are regulated by the federal government's I.C.C. and the regulatory body of their state of registration. If they operate within a state they are regulated by the state regulatory body only.

CONTRACT CARRIERS are trucks which contract to carry cargo for a shipper, whereupon they file their contract rates, and most of the other operational requirements of common carriers, for the approval of the state or federal regulatory groups. However, they do not have to prove to be a "public convenience or necessity." In effect, therefore, they are "franchised" to operate in terms of a particular contracted job, whereas the common carriers are franchised over a period of time, over stated routes. Otherwise, there is little difference between "common" and "contract" carriers.

PRIVATE means just that. An oil company operates its own fleet of oil delivery trucks. A farmer hauls his own

produce to market in his own truck. A dairy hauls its milk in its own trucks. Strictly private hauling and therefore under no regulation, other than the regulation your own passenger car is under.

EXEMPTED FOR-HIRE CARRIERS include both common and contract carriers, which, because of the type cargo they are hauling, or territory they operate in, are exempt from I.C.C. regulation. Broadly these cargoes include any farm produce, rough lumber and fish hauled anywhere. In addition, trucks which haul any cargo between addresses within a single city are exempted. When regulated common or contract trucks have any such cargo, or confine a load to pick-up and delivery within a city, they become automatically exempt from regulation while engaged in such activities. Such a provision, as you can see, leaves big regulation loopholes. Thus the so-called "gypsy" trucker, wanting to haul regulated cargoes at cut rates (such as steel) will cover such a cargo with sacks of potatoes. To the casual inspection of the very few I.C.C. inspectors who might stop him on the highway, he will be carrying potatoes and is exempt from regulation. Regulations governing overloading are not exempted in this category, however.

In addition, the regulated trucking firms are designated by "classes" in the I.C.C., the same as railroads. Class I trucking firms are those who have $100,000 or more in revenues a year. Such class designations are made arbitrarily. Class I railroads are those with annual operating revenues of $1,000,000 or more a year.

(Let it be said here that this effort to brief any category on the subject of trucking has its pitfalls, inasmuch as there is such wide variance of regulation and even meaning. It is difficult to generalize and make a statement "hold water" for any specific state.)

Another baffling trucking term is "reciprocity." What it means is that a truck registered in New York is allowed

to operate across, or terminate and begin its shipments in other states without payment of license or registration fees. Most states have free reciprocity laws, allowing "foreign" trucks to operate in their state without payment of taxes. Iowa, however, is a notable exception. Iowa charges foreign trucks a use of highway fee, by the year, the quarter or the trip. If reciprocity were not allowed, trucks would contribute to the upkeep of the highways of "foreign" states which they pound to pieces, and the added taxes would necessitate an increase in their rates, for the 5 PERCENTERS operate on a profit margin of about 4%.

How are trucks taxed? Generally they pay annual registration or license fees on the basis of unloaded or net weight. In New York trucks and tractors weighing over 1,800 pounds, unladen, pay 80¢ per 100 pounds annually. Trailers over one ton pay $8 per ton for the unladen weight plus carrying capacity. In New York there are no other fees, except, of course, the money collected on gas tax and driver license fees. In some states trucks pay a special motor carrier or "franchise" tax, and other types of fees. In all states the trucking firms pay property and income taxes the same as you do.

The railroads would like to see a ton-mile tax slapped on trucking, since it is recognized as the fairest basis of taxation, for then, the trucker would pay for what he used. But the railroads recognize its impractical nature from an enforcement and collection standpoint. Thus, it pretty well boils down to increasing the registration fees of big trucks. Just what form the legislation will take when the time comes to introduce it in the various states is not known. The Counsel sub-committee of the Eastern Railroad—Transportation Committee is at work on drawing up suggested laws which will be in the public interest.

About Railroads

For almost 15 years individual railroads and organizations of railroads (in groupings such as the ERPC, and the

AAR) have been trying without success to secure passage of relief legislation which will assure them some semblance of fair competition.

They have, in their competitive transportation research, accumulated a great wealth of data bearing on the problem, but haven't, for a variety of reasons (many inherent in the data available) broken the information down to a usable or understandable "grass roots" level. Where it has been used, as in AAR advertising or pamphlets, the "poor me" defensive philosophy permeates the copy.

Apart from the statistical data accumulated, their other efforts toward solving the problem have been spasmodic, almost entirely at the management level directed to politicians (trying in vain to shortcut public opinion), and, in many cases, at odds with one another because of competitive rivalry and personalities involved. According to their own estimate, they have even failed in selling the story of railroads vs. trucking to their own employees.

The railroads actually have a very real problem. Trucking is making big inroads into their freight business, which is the staff of life to railroads. As an example: In the past ten years trucks have increased the amount of coal they haul from the mines by 13%. Inter-city trucking has tripled since 1938. And the big trucks have shown a tremendous use-of-highway increase, thus: In 1931 only about eight trucks in every 1,000 had axle loads of 18,000 pounds; in 1947 this increased to 76 per thousand.

Railroads must build and maintain their own right-of-ways (which cost them a billion dollars last year), plus the payment of property and other similar taxes to the tune of another billion dollars. These figures combined (two billion) are approximately what was spent on building and maintaining all streets and highways in the nation last year. Or, if you want to look at it this way: The railroads built and maintained their own right-of-ways, and then paid, in taxes, half of the cost of all the streets and highways. In many areas, the railroads are regarded as the principal

source of tax revenue. In N.Y. state this year, the railroads will pay state and local taxes averaging $3,893 per mile of line. As contrasted with the railroads, motor carriers operate over highways constructed and maintained by public funds.

The result of this inequality of taxation makes it necessary for the railroads to charge higher rates than the trucks. This considering the fact that the railroads are more efficient, thus: The railroads can haul 100,000 tons of freight from coast to coast at a cost of 3,500 man-days of labor, to the truckers' 90,000 man-days. To move the same load (above), the railroads would use 90 tank carloads of diesel fuel, whereas trucks would use 250 tank cars of fuel. And their place in national defense is best attested by the railroads' record in the recent war, when they hauled more than 90% of everything moved (passengers and freight) within the United States.

Higher rates alone are not causing the railroads to lose business to the truckers, and they know it and are making efforts to do something about the problem. But railroads are ageless and cumbersome and all sorts of disagreeable things. It will take time, but they will get there. In recent years, for example, they have begun operating fleets of their own trucks to make door-to-door deliveries. If their taxes were only not so high. . . .

But in these days of higher and higher government costs, any effort to get taxes reduced is doomed to failure. Rather than reduce taxes, legislators are looking for added sources of revenue. Thus the solution to the problem is to educate the public, not on inequalities or high railroad taxes, but on a source of revenue which they have been neglecting . . . the big trucks. And since the cost of highways is a big portion of a state's expenditures, and the trucks are pounding the highways to pieces faster than they can be rebuilt, why look further for a better source of revenue?

About Highways

Confusion will reign if you don't get squared away on the types of roads referred to in the various reports. This breakdown will help:

URBAN STREETS (and alleys): Streets located in cities, like New York City, which are built and maintained mainly by funds raised by property taxes (the railroads call them "ad valorum" taxes, which means taxes on both real estate and the improvements thereon), plus money collected by the state in gas taxes, registration and license fees and allocated to the city, as well as (infrequently) the city's own gas tax. In addition, cities make assessments (usually 50% of the frontage cost to the center of the street) against property owners fronting on a newly constructed street, and raise additional money by issuing bonds, in traffic violation fines and from various tolls.

COUNTY AND LOCAL ROADS: Counties and townships build and maintain their own roads from money collected in property taxes, allocations made them by the states from "user taxes," and in other ways similar to the cities, PLUS federal allocations called Federal Aid to Secondary Roads under county control.

STATE MAINTAINED HIGHWAYS: States build and maintain the major highways connecting urban and rural population centers out of money from "user taxes" which they collect (amounting, on a national basis, to 44% of the cost of highways), *plus money allocated from the general fund* of the state. In addition the federal government allocates funds called Federal Aid To State Primary Highways and Federal Aid to State Secondary Roads for the so-called federal highways passing through a state, on the pretense that a cross-country system of highways is necessary for the na-

tional welfare and defense. Most states also issue highway bonds and collect money from tolls, fines, etc.

FEDERAL ROADS: The only true 100% federal roads are located in national parks and similar federal maintained areas.

URBAN EXTENSIONS TO STATE HIGHWAYS: This is a relatively new classification, and came into being to insure a continuation of the major state highways through cities. Usually states have maintained highways right up to the city limits and quit. Cities were supposed to bring them on into the town, or through it, but had difficulty in financing them. To prevent traffic bottlenecks the states, now aided by the federal government, are making specific allocations for this category of roads.

INTER-STATE HIGHWAY SYSTEM describes a newly conceived system of heavy-duty divided-lane highway *superimposed* on the state's *present* primary system to provide not to exceed 40,000 miles of "defense" highways between the nation's urban concentrations of population. Conceived as Federal-aided highways, which a lot of the mileage already was, it is now intimated that the federal appropriation may exceed the matching 50-50 ratio with state funds. Appraisal of the standards for this system of highways indicate their being designed for big trucks' use.

Federal aid, with the exception of the new Inter-State category above, has always been on a 50-50 basis . . . the state or local unit paying half of the cost which is matched by the federal government. Secondary roads, whether state or county maintained, may be Federal-aided so long as the road is not now, or in the foreseeable future, a potential "primary" highway.

Federal aid is continually under severe attack since the total amounts authorized usually represent not more than one of each four dollars collected by the federal government

from excise taxes on motor vehicles. Further, the total appropriations to each state are not on the basis of proportion collected within a state.

The purpose of the above breakdown is essentially one of caution. As you get into road statistics, you might think, for example, that you are talking about the mileage of state-maintained highways (which is our primary concern, since the 5 PERCENTERS operate mainly on them) when the actual figure you've used is Federal-aided state highways . . . a lesser mileage. And so on.

You'll see the term "user taxes" in everything. This refers to the money collected from highway users in *state* gas taxes, *state* registration fees, and *state* motor carrier fees. Federal aid to highways is not usually considered as coming from "user taxes," the reason being that it is not allocated to the states on the basis of percentage raised from a state, but rather on the basis of a formula of miles of roads, population and square miles in a state. (Federal aid, however, does come from highway users in the form of a 1.5¢ federal tax on each gallon of gas, 1¢ tax on each quart of oil and from excise taxes on vehicles and parts.) Since a portion of state collected "user taxes" is allocated to county and local roads and city streets, when you are talking about user tax income for state-maintained highways, you must be cautious to get your figures from the Public Roads Administration table marked "Revenue applicable to state-maintained highways."

You'll also find frequent references to the term "diversion" of highway funds. The American Trucking Association can, and does, juggle the various legitimate figures to show that "user taxes" are much more than the expenditure on highways, and so claim that money produced from highway users is "diverted" to other uses. This is not so, but they have made such a case for it that 20 states have passed constitutional amendments against "diversion" of highway user funds. Actually what happens in the rest of the states is that the income from user taxes is put into the

states' general fund, from which all state expenses are appropriated. As we said above, on a national average, highway user taxes pay only 44% of the costs of the nation's roads. The reason we are against such anti-diversion nonsense is that it has never been possible, and probably never will be, to raise the cost of roads from user taxes alone, if you stick to unjuggled facts. And finally, anti-diversion is a basic fallacy. Followed through to its logical conclusion, you would use the income from the cigarette tax for cigarette smokers entirely, the income from the tax on liquor for drinkers, etc. What then would be available for supporting the schools, the libraries . . . and, yes, the roads?

You will find as you get into the study of our highways that they are in bad shape. Thirty-four states, reporting to the Joint Committee on Economic Report of Congress, estimated (on September 6, 1949) that 20 billion dollars would be necessary to bring their highways up to snuff. Compare this to the period 1921-40, when most highways were being built, in which the total expenditure for all highways, roads and streets in the U.S. was 41 billion dollars.

What has caused this breakdown of the highways? Age, lack of repairs during the war, increased use of existing highways and trucks. Fortunately for our job, trucks warrant and are getting a huge share of the blame. Just how do they fit into the picture?

Over the years trucks have been allowed to get longer and wider. That necessitates wider highway slabs, and, in order to make passing safer, less curves, wider shoulders, etc. Heavier loads have slowed trucks down on an uphill climb. As a result, highway engineers are reducing grades, for studies have shown that in hilly terrain, trucks will reduce the total volume of traffic over a road by 50%. But the greatest problem with the 5 PERCENTERS is their pounding the highway to pieces. The process is called "pumping."

Pumping is easily understood. Watch a small boy leap onto a board set on mud. A bit of the mud will gurgle out the sides. Now watch a heavy boy leap onto the same board. Mud will spurt out from under the board, leaving a void under it. Trucks produce the heavy boy effect on each slab of highway. When the void under the concrete develops, the heavyweights begin to crack off the ends of each slab, and the highway is shot. Fortunately, pumping was unknown before the days of big trucks. Thus, it is damage directly traceable to trucks.

In the broad sense, we are dealing with a problem loaded with political significance. It amounts to this: America will continue to have, use and see operated, its railroads. The question is whether they will function as private business or as a ward of the government. America still believes in free enterprise, and the majority of people today oppose socialism. Delivery of the railroads into government management would be a great, if not the greatest, victory for the advocates of socialized economy in America. Unless the railroads find that their inequitable competitive position with long-haul trucking has been rectified, they cannot exist as a private business which will attract the investor's dollar. In this fight, we have friends in the great majority of the American public and its press. Also, of significance here is the fact that the railroads are being treated unfairly, since by using public-maintained rights of way, the truckers are getting a "free ride" while the railroads are buying a mighty expensive ticket. And the American, fortunately, still is a fellow who votes for fair play.

In summary . . . our highways are in bad shape. The cost of rebuilding them to take care of increased usage is beyond the level of present revenues, and since trucks are the culprits and are not paying nearly their fair share of user costs, the burden is theirs! Amen.

Material Available for Study of the Problem

The ERPC has issued two of a total of four volumes designed to corral the most important information bearing

on the problem. These blue plastic-bound volumes are required reading.

Next, brief the small book titled "Automotive Transportation" issued this year by the Brookings Institution. This book considers briefly all of the significant contributions entering into the provision of highway transportation.

Another grouping of material specifically related to the problem are the weekly bulletins issued by the AAR Competitive Transportation Research office. For the most part, these bulletins contain culled newspaper stories and editorials week by week. We have all of them for the past year.

Because it is "lighter" reading, it would be well to pursue the report titled "Highways of Indiana," a report made in 1948 by the Indiana State Highway Commission on their entire highway problem.

Then read Mr. F. N. Nye's memo to Mr. C. R. Dugan, dated New York, July 5, 1949. Mr. Nye is freight traffic manager of the New York Central railroad, and on the Research sub-committee of the Eastern Railroad. His memo is the best summary of the Griffenhagen report on the highway program in Illinois yet made. It will prove an easy introduction to the analytical. . . .

"Griffenhagen Study" titled "A Highway Improvement Program for Illinois." This is the most complete study made to date of any state highway problem, and is important to us because a similar study will be made by Griffenhagen in New York State. .

Although a red light is up on its use, you had better pursue the AAR's mimeographed 14-page study entitled "Do Big Trucks Pay Their Way?" by Dr. Duncan and Earl Feldman. The effort was a factual analysis of the titled problem, but the report got into trouble because it tried to show the amount the 5 PERCENTERS failed to pay on the basis of highway expenditures and on the basis of payments made. The two divergent answers left the report wide open to a Trucking Association attack.

Another booklet, titled "Truck Facts," published by the Automobile Manufacturers Association, is good from the standpoint of noting how the trucking industry has grown.

Then look over any one of the yearly Public Roads Administration booklets titled "Highway Statistics for (year)." These consist of statistics gathered by the PRA from each of the states each year, and show registration, finances and mileage on the nation's roads. They will be our greatest single source of statistical material on a state or national level.

We also have a full set of the speeches made by the U.S. Commissioner of Public Roads which you ought to brief.

Another "heavy reading" report worth briefing is the gray and red booklet published by the AAR on competitive transportation. In this you get the railroad point-of-view, although it is a bit outdated. Ask for "Highway Motor Transportation," August, 1945.

Finally, go through the "clips" we have collected to date. They are filed by subject matter, such as overloading, highway construction, etc.

* * * *

WHAT EVERY RAILROAD MAN SHOULD KNOW ABOUT TRUCK COMPETITION—from editorial in *Railway Age*—Sept. 10, 1949

The railroads are now showing, not any too soon, more concern about their problem of truck competition—and are giving more systematic study to it—than at any time heretofore. The timeliness of this attention is indicated by the Interstate Commerce Commission figures which show that the Class I intercity contract and common carriers alone had gross revenues of more than $1.6 billion in 1948, compared to only $475 million in 1940. The totals do not include the large traffic moved by private carriers by highway, and that of the smaller for-hire trucking concerns. They reveal, nevertheless, for what is only the larger part

and not all of the long-haul trucking business, a revenue volume which was only 13 per cent of railroad freight revenues in 1940 and in 1948 has grown to 20 per cent.

Furthermore, the trucking business has become increasingly profitable. The operating ratio of the Class I intercity for-hire trucks was 95.6 in 1940 and had dropped to 93.2 in 1948. Some railroad men have been deceived by the relatively high operating ratio of the truck lines, compared to that of the railroads. Optimism on this score vanishes when it is recalled that the operating expenses of the truck lines include all the capital charges for roadway—an expense which still confronts the railroads after their operating ratio has been computed.

There is, then, no doubt whatever that a large volume of long-haul freight traffic which used to move by rail has been diverted to the highway, and that the ratio of tonnage so diverted to that remaining on the rails is continuing to increase. The situation, as long as it remains uncorrected, menaces the future of every man connected with the railroad business, directly or indirectly. When any business is confronted by rivalry of such magnitude, the sensible course is to determine to what degree the diversion is based on sound economics—and, therefore, must be accepted as unalterable—and to what degree non-economic factors, which can and should be resisted, may be the principal cause. Very little research is needed to bring to light a multitude of non-economic and even anti-economic factors which are the principal cause of the loss of long-haul traffic by the railroads to the intercity trucks. For lack of space only a few of these anti-economic (and, hence, potentially alterable) factors can be enumerated here—but important among them are the following:

1. To have paid, according to its relative ton-mileage, its fair ratio of highway expenditures, the average "big truck" of three axles, or truck-trailer combination, should have contributed fuel and license fees in 1947 totaling $1,881. The actual average levy was only $538, indicating

a contribution by other highway users and general taxpayers of an average of $1,343 toward the expense of operating these outsized vehicles—the only ones, incidentally, which are a factor of any significance in diverting freight traffic away from the railroads.

2. The foregoing computation of the subsidy enjoyed by the big truck assumes that its share of total highway costs is directly proportional to its ton-mile usage of the highways. Actually, a highway designed to take care of all classes of traffic except the very big truck can be built for a great deal less money than one which must also accommodate these out-sized vehicles. In one state where ton-miles operated by the heaviest vehicles is 45 per cent of total ton-miles, a correct assignment of costs attributes, not 45 per cent, but 55 per cent of the total highway cost to the heavy vehicles. Other studies, as conditions vary from state to state, would assign an even higher ratio of total costs to the heaviest vehicles—which, incidentally, represent only about five per cent of total registrations. It is evident that the estimate, given in the foregoing paragraph, of $1,343 as the average subsidy enjoyed by the big truck is at least several hundred dollars too low, furthermore, this estimate applies only to vehicles within the legal limitations on sizes and weights.

3. As heavily subsidized as even the legally loaded heavy trucks are shown in the above to be, the evidence is that a large percentage of their owners are not content with this generosity—and are increasing their exactions from other highway users and the general taxpayers by loading their vehicles substantially in excess of the prescribed maxima. For instance, the chairman of the Indiana State Highway Commission reported in July that when, earlier this year, enforcement of that state's maximum weight laws was intensified, from 20 to 35 per cent of the trucks weighed were found to be overloaded. The damage by trucks to highways carrying loads far in excess of those they were designed to bear, of course, adds immeasurably

to the subsidy enjoyed by the big-truck haulers, as set forth in the two foregoing paragraphs. One single trip by an overloaded truck in Pennsylvania was reported to have resulted in highway damage totaling $15,000. The fines for overloading, in most states, are only a small percentage of the extra profit which an operator will make by violating the law.

4. Thomas H. MacDonald, head of the United States Public Roads Administration—and no enemy of the trucking business, as readers of this paper are well aware—asserted in a public address earlier this year: 'Axle loads in excess of 18,000 lb. should not be authorized. . . . In some quarters it has been suggested that there be a gradual raising of axle load limits over a period of years. No policy could be more wasteful of public funds.' A tabulation of weight limitations in the 48 states as of the second quarter of 1948 shows that, already, nine states had established a heavier legal maximum than that recommended by Mr. MacDonald. Subsequent to this compilation, other states (e.g., Ohio) have further increased allowable weight and size limitations.

5. The actual fees paid for highway use by the biggest trucks range from $67 to upwards of $700, clearly indicating that no systematic or scientific plan is being followed in levying these charges. Also, there has been no proportionate increase in these charges to reflect the increase over prewar which has occurred in the cost of highway construction and maintenance. The system of "reciprocity"—whereby many states assess no taxes whatever on out-of-state trucks which use their highways—simply invites the truck operator to take out his license in the state with the lowest fee, and to enjoy a "free ride" at the expense of the highway users and other taxpayers in all the other states his vehicles traverse.

6. All railroad service is fully regulated, and the railroads are required to handle all traffic offered at prescribed

rates. There is no regulation—as to rates or certificates of convenience and necessity—of trucks making long hauls of agricultural products (e.g., citrus fruits and milk). Contract carriers, as a matter of legal right, handle only such traffic as they choose—and the railroads are prevented from making rates to meet such competition where it exists unless they make similar rates on other traffic where prospective earnings are not sufficiently attractive to invite competition. Since so-called "common carrier" trucks have limited facilities, they often find it impossible to provide transportation for unattractive freight—so the railroads are left with all the business that nobody else wants. The loss by the railroads of traffic which they can handle with actually greater economy than the trucks—but which is diverted to the highway by subsidies and inequality of regulation—places a burden of arbitrarily higher costs on that traffic which must move by rail.

The above list, of political factors causing the diversion of traffic from the railroads to the trucks, as indicated at the outset, is far from complete. No item in the list is economic. Every one is arbitrarily political, indicating that the operators of outsized, long-haul trucks have been, so far, a lot more energetic and skillful in advancing their interests than railroad men have been in defending theirs. There is no inherent reason why this disparity of political strength should continue, because the solution to these issues which would adequately protect the interest of the railroads also coincides with the self-interest of 95 per cent of the users of the highways and of all payers of general taxes. The railroads' interest also coincides with the overriding national interest in policies toward transportation which will maximize national wealth and income by channeling its transportation to the most economical agencies, not wasting the nation's substance by erecting the senseless political barriers which now exist against the selection of the best agency for the job. Who is going to tell, and sell, the sane approach to this problem to the American people if railroad men do not do it?

EXHIBIT P-144.

May 17, 1949.

W. A. R.

For your information attached is copy of memo from J. R. D. and joint reply regarding competitive forms of transportation.

R. J. L.

May 16, 1949.

J. R. D.

Yours May 11th re "campaign for Federal and State taxation against users of highways, waterways, etc." to be discussed in New York May 19th.

Recommendations:

(1) The Associated Railroads of New York and the Associated Railroads of Pennsylvania be requested to explore the possibilities of organizing the private motorist and other groups that are injured by larger and heavier over-the-road trucks. The railroads can start but it must become a non-railroad group just as the Shippers Advisory Boards became self-supporting bodies.

(2) It is not necessary to superimpose any new regional organization. Strengthen existing organizations as may be necessary to produce more effective work.

Nearly all inland waterways, coastal waterways and all airways are under Federal jurisdiction. Any programs that reduce subsidy on these forms of transportation should be handled through the A.A.R. This does not prevent state associations from taking action on the state and local level where possible.

The idea that there should be "superimposed a regional organization looking after publicity, etc., and coordinating activities within the several states" may have come from Mr. R. E. Dougherty who recently retired but continues as a consultant for the New York Central.

Mr. Dougherty has done good work in bringing the railroads and the Public Roads Administration together on grade crossing programs. MacDonald wants to bring the railroads, the Public Roads Administration and the State Highway Officials together on size and weights. MacDonald wants to see the railroads get behind the size and weight restrictions recommended by the American Association of State Highway Officials and has urged Dougherty to promote this idea.

Dougherty believes it might stop the annual legislative battles over size and weight restrictions. In our opinion, it will not.

Under such a plan the railroads could not have opposed the increase in Pennsylvania from 45,000 to 60,000 lbs. as this is below the AASHO recommendations.

Adopting the AASHO limits would mean a reduction of some limits in the following states (details attached)—N.Y., Pa., Md., Ind., Ill., Mich., Conn., R.I., Mass., N.H., Me.

On the other hand adopting the AASHO limits would mean increase of some limits in the following states (details attached)—N.J., Pa., Del., Va., Ill., Conn., R.I., Mass., Vt., N.H., Me.

SHOULD THERE BE A REGIONAL COMMITTEE TO LOOK AFTER PUBLICITY?

Publicity programs related to a particular legislative controversy must be handled by the railroads in that state. If it is desired to have a broad publicity program on the general truck, waterway and airway situation it can be handled through the eastern railroads in the same manner as the "featherbedding" campaigns were handled.

SHOULD THERE BE A REGIONAL COMMITTEE TO COORDINATE ACTIVITIES BETWEEN STATES?

As long as the states do not have uniform highway conditions there cannot be uniform size and weight restrictions.

(*) Head of Public Roads Administration (U.S.A.)

Therefore, a coordinating committee is not necessary to handle size and weights.

SHOULD THERE BE A REGIONAL COMMITTEE TO COORDINATE PROGRAMS RELATING TO TAXES (SUBSIDY)?

Subsidy studies by impartial groups (for example—the Princeton Surveys headed by Dr. Sly, in New Jersey and the Pennsylvania Economy League in Pennsylvania) are always helpful. Such studies should be coordinated by the Department of Competitive Research of the A.A.R. If extensive studies are to be made the Department may have to increase its personnel.

Regardless of the number of studies or Committees, the final test is (a) Who can get the clear facts across to the governors and members of the legislatures? (b) Who can get the votes?

These two items can be handled only by the people who are constantly working with the lawmakers.

It is encouraging to find MacDonald on our side in some of these truck controversies. He helped defeat the increase in gross weight in Maryland from 67,000 to 90,000 lbs. and has opposed the increase in axle load now pending in Delaware Legisiature. He has recently made public statements that where the size and weight limitations exceed those recommended by AASHO, they should be reduced. However, the railroads should not indorse the AASHO limits throughout the eastern states. These limits are too high. We have no assurance that the AASHO will not again increase their limits as they have twice, during the past 15 years.

J. M. S.
F. C.
R. C. M.
J. D.

cc: W. S. F.

If the recommendations of the AASHO are adopted following reductions should be made:

State	Reduce:	Comments
New York	Axle load from 22,400 to 18,000 lbs. Height from 13′ to 12′ 6″	
Pennsylvania	Axle load from 20,000 to 18,000 lbs.	
Maryland	Axle load from 22,400 to 18,000 lbs. Establish 12′ 6″ height	No restriction at present
Indiana	Axle load from 22,400 to 18,000 lbs.	'49 law allows 22,400 on heavy-duty highways as specified by Highway Dept.
Illinois	Establish 12′ 6″ height	No restriction at present
Michigan	Width from 102″ to 96″ Maximum gross weight from 128,000 to 72,000	While present law permits 128,000 because of length limit of 50′ only haulers of heavy material, steel, lumber, leather, etc. can get above 72,000.
Connecticut	Axle load from 22,400 to 18,000 lbs. Width from 102″ to 96″	
Rhode Island	Axle load from 22,400 to 18,000 lbs. Width from 102″ to 96″	

State	Reduce:	Comments
Massachusetts	Axle load from 22,400 to 18,000 lbs. Establish height of 12′ 6″	No restriction at present
New Hampshire	Establish height of 12′ 6″	No restriction at present
Maine	Axle load from 22,000 to 18,000 lbs.	

If recommended limits of AASHO are adopted present limits to be increased as follows (not complete—only more important increases are shown)

State	Increase:
New Jersey	Length—tractor semi-trailer 45 to 50′ Length—other combinations 50 to 60′ Maximum gross weight 60,000 to 72,000 lbs.
Pennsylvania	Length—tractor semi-trailer 45 to 50′ Length—other combinations 50 to 60′ Maximum gross weight tractor semi-trailer 45,000 to 65,000. Gross weight other combinations 62,000 to 72,000 lbs.
Delaware	Gross weight—tractor semi-trailer 60,000 to 65,000 lbs. Other combinations—60,000 to 72,000 lbs.
Virginia	Length—tractor semi-trailer 45 to 50′ Length—other combinations 45 to 60′. Gross weight—tractor semi-trailer 40,000 to 65,000 lbs. Other combinations—50,000 to 72,000 lbs.

State	Increase:
Illinois	Length—tractor semi-trailer 45 to 50′ Length—other combinations 45 to 60′
Connecticut	Length—tractor semi-trailer 45 to 50′ Length—other combinations 45 to 60′ Gross weight—tractor semi-trailer 50,000 to 65,000 lbs. Other combinations—50,000 to 72,000 lbs.
Rhode Island	Length—tractor semi-trailer 45 to 50′ Length—other combinations 45 to 60′ Gross weight—tractor semi-trailer 50,000 to 65,000 lbs.
Massachusetts	Length—tractor semi-trailer 45 to 50′ Length—other combinations 45 to 60′ Gross weight—tractor semi-trailer 50,000 to 65,000 lbs. Other combinations—50,000 to 72,000 lbs.
Vermont	Length—other combinations 50 to 60′ Gross weight—tractor semi-trailer 50,000 to 65,000 lbs. Other combinations—50,000 to 72,000 lbs.
New Hampshire	Length—tractor semi-trailer 45 to 50′ Length—other combinations 45 to 60′ Gross weight—tractor semi-trailer 47,500 to 65,000 lbs. Other combinations—47,500 to 72,000
Maine	Length—tractor semi-trailer 45 to 50′ Length—other combinations 45 to 60′ Gross weight—tractor semi-trailer 50,000 to 65,000 lbs. Other combinations—50,000 to 72,000 lbs.

Limits Proposed by A.A.S.H.O.

WIDTH:	96"
HEIGHT:	12' 6"
LENGTH:	Single truck—35' Single bus—40' Tractor semi-trailer—50' Other combinations—60'
GROSS WEIGHT:	Single axle—18,000 lbs. 2 axle truck—36,000 lbs. tractor semi-trailer, 3 axles—54,000 lbs. tractor semi-trailer 4 or more axles—65,000 lbs. Other combinations—72,000 lbs.

EXHIBIT P-198.

New York Washington Chicago

SELVAGE & LEE

Industrial Public Relations
1 East 43rd Street, New York 17, N. Y.

July 8, 1949

Jul 11 1949

Mr. Thomas J. Deegan, Jr.
Vice President—Public Relations
The Chesapeake and Ohio Railway Co.
Terminal Tower
Cleveland 1, Ohio

Dear Tom:

I am enclosing the memorandum which you requested. I hope it does the job for your Committee—for us. Cynical me, if is the first thing I have seen since I quit playing around in politics that has me excited.

Cordially yours,

Jim
James P. Selvage

/imp
–enc

New York Washington Chicago

SELVAGE & LEE
Industrial Public Relations
1 East 43rd Street, New York 17, N. Y.

July 6, 1949

MEMORANDUM

To: Mr. Thomas J. Deegan, Jr.

From: James P. Selvage

As we told you in our brief discussion last week, we feel—and hope your Committee will agree—that Selvage & Lee has certain special qualifications and background which fit it to serve your group exceptionally well.

In this memorandum, we should like to outline some of these qualifications, for it goes without saying that the selection of the right public relations firm is primary to the results you seek. Also, as you requested, we are incorporating a few observations as to how we would approach the problem.

Selvage & Lee Qualifications

First, let us enumerate some of the reasons why we feel particularly well-equipped to work for you and, as you read these comments, we hope you will appreciate that we do not look upon this project as "just another account."

1. *Knowledge of* and *interest in* the problem.

In this respect, our organization is already keenly aware of the problem and has given thought to possible approaches and solutions. More than two months ago we prepared a plan for our client, the American Railway Car Institute, looking to bringing the railway supply industry into the fight to preserve the financial integrity of the railroads and, thus, stave off the dangers of government ownership precipitated by insolvency.

In recent months we have participated in numerous conferences on the subject with Messrs. Fairman Dick and Arthur Page, authors of the recent survey of the railroad situation; with Mr. Faricy and several railroad presidents; at luncheon with the top editorial board of *Fortune*.

For a month or more we have had a researcher assembling facts on the subject, including what has been done in the past by the railroads and the competition, and have had staff meetings directed purely to this subject.

These operations were aimed at the development of ways and means through which ARCI might help the railroads. As a result, without pretending to know all of the answers, we have developed a familiarity with the fundamental issues—with the personalities involved—with the outside citizen groups that might be activated in support of your objectives.

Perhaps equally important with the knowledge and background acquired, the principals in Selvage & Lee have long been "crusaders" for competitive enterprise and have devoted a great amount of time, extra-curricularly, to the propagation of principles in which we believe. The basis of our recommendations to ARCI was that, over and beyond commercial interests, the railroads must be supported as a first line of defense against nationalization of industry.

2. We understand that you envision your program aimed at heavy trucks as being dramatic and hard-hitting, as indeed it must be if it is to succeed. Selvage & Lee, we believe, is one of the few public relations firms that combines:

   a) The ability, based upon experience, to counsel wisely on public relations and to weigh all eventualities before an action is taken, but—

   b) In addition to being sound in planning and strategy, we have the experience in organizing

and carrying through large campaigns requiring the mobilizing of public sentiment.

Putting it another way, we know how to put on a hard-hitting campaign and have done so many times (as for instance, in the case of the current margarine legislative fight); but have never in more than ten years of operation done *anything that has back-fired on a client.*

3. This firm has a record of success in applying public relations techniques to problems which are essentially legislative. Again, we turn to the margarine program. The margarine industry had made a number of abortive fights against discriminatory legislation enacted 63 years ago by Congress and bulwarked by State legislation.

It was our recommendation that the time was ripe to strike in the 80th Congress, with butter selling at $1.00 a pound.

In seven months after we took the account, the legislation, backed by tremendous public pressure, was through the House and was stopped in the Senate only by adjournment for the political conventions. In the meantime, *five states* repealed their legislation over the bitter protest of the butter industry.

The butter opposition, caught short in 1948, stepped up its activities this year. But once again our legislation, supported by organized consumer groups and the press generally, is through the House by a 3 to 1 vote, is at the top of the docket in the Senate and virtually assured of passage at this session or the final session of the 81st Congress.

Favorable action has been taken in 9 STATES this year.

Concurrent with attaining the legislative objectives, margarine has been touted editorially by 90 per cent of the daily newspapers and practically all mass-circulation magazines as the equivalent of butter. *Tide* de-

scribed it as "the greatest publicity campaign of all times."

Other programs designed to promote legislation, or to forestall legislative action of a harmful nature, have been conducted for The Investment Bankers Association, and the American Forest Products Industries, Inc.

4. Ability to work with committees representing an industry is important. Selvage & Lee, as a firm and as individuals, has had broad experience *cooperating* with industry groups. In addition to those already mentioned, we have executed programs for the anti-friction bearings manufacturers and railway car builders.

5. You mentioned that your proposed campaign may eventually encompass advertising.

In this connection, our firm has an additional qualification which should be brought to your attention. We operate a wholly-owned affiliated advertising agency, French & Preston. This is mentioned here because it has been our experience—and that was the reason underlying the formation of the agency—that public relations advertising demands a technique different from product advertising. As you are well aware, public relations advertising quite generally is written by the public relations division because it has developed the policy and research leading up to the ads.

It would be a distinct advantage to have both operations under one roof for then the people who would prepare the ads would be thoroughly indoctrinated with your story and there would not be the necessity of "educating" two separate groups.

There is another factor to be considered, namely that our public relations fee could probably be scaled down if advertising revenue were involved.

We should like to add that French & Preston is a fully-equipped advertising agency, handling this year billings which will approach $1,000,000.

Public relations-wise, it is a definite asset to Selvage & Lee's clients, for it permits better treatment of any programs involving printed matter or art work.

6. We are sure that you feel, as we do, that the way in which a public relations agency is set up—its modus operandi—is important to your considerations.

In this connection, we want to emphasize that Selvage & Lee does not operate on an "account executive" basis in which one of the agency's executive assumes full responsibility for the client or clients assigned to him. Instead, we use the varied talents of all of our basic staff members on the problems of each client.

We feel that it is important to have skilled and proven manpower immediately available within the organization which you select. Thus we call to your attention that in terms of the number of people directly on our payroll—as contrasted with client's employees who might work out of our office or be supervised by us—the Selvage & Lee organization is among the largest in the field.

We have the trained man-power, already indoctrinated with your story, around which additional personnel needed for your program can be built.

We believe firmly in two things: *specialization* and *teamwork*. Thus, Selvage & Lee has—

A Women's Department—which not only has a wide variety of national contacts with women editors and writers, but also has specialized in cooperative efforts with women's groups and organizations.

In the margarine campaign, for example, we were able to enlist the interest and active

support of a great many state and local organizations, as well as practically every important national woman's organization.

A Radio Department headed by a man who not only knows what makes good radio publicity but has spent years developing contacts in the field.

A Placement Department—which undertakes placement of stories and articles written by staff writers. In this department are men who specialize in contacts with national magazines, with press associations, with syndicates, with photo services, with newsreels—and who through the years have built up contacts in almost all important news centers.

This department also has built up working arrangements through the years with some of the country's leading free lance writers and cooperates actively in researching and providing material for them.

A Labor Specialist— a man who has wide experience with labor on the labor side of the fence. In the margarine fight he was able to get active and public co-

operation from the A.F. of L., the C.I.O., the Machinists, the United Mine Workers and other unions as well as publicity in scores of union publications.

A Stockholder Relations Specialist— whose job it is to keep abreast of the most recent developments in stockholder relations so that those which are sound may be adopted by Selvage & Lee clients.

An Employee Information Specialist— who serves the same purpose as the above in connection with employee information programs.

A Staff of Writers— all of whom are trained newspaper men and some of whom have served as newspaper or magazine editors.

The results of this type of operation, we believe, speak for themselves.

Offices.

The firm has offices in New York, Washington and Chicago, providing outlets in the three major centers from which news most frequently originates and also a flexibility whereby it is possible to undertake concentrated work in a variety of states without getting too far away geographically from home base.

7. We do not take competing accounts—or even accounts whose interests might remotely be in conflict. The fact that we have worked for ARCI for three years not only puts us in sympathy with what you are trying to accomplish but also means that we have steered clear of

any client relationships which might prove embarrassing to you or cause us to give less than our best to your program.

Approach to Your Problem

We feel that your gradual approach to the problem, as outlined briefly to us, is eminently sound. Too many public information programs have scattered their shots at the outset, trying to do a job in a large number of states and never achieving any real impact anywhere. Thus we concur heartily with your decision to move on three states initially, developing in them a "package", testing it to get out the bugs, and then transplanting it elsewhere.

(Parenthetically, we have been very active for margarine in two of the three states in which you are immediately interested—New Jersey and Ohio.)

Assuming that your appeal will be to the pocketbook nerve and to highway safety, it seems to us that many of the consumer groups with which we have been working in these two states can be enlisted in your campaign through contacts already established.

As we conceive your program—without the benefit of extensive explorations with you—it should involve initially:

1. Publicity directed toward the cost and safety angle.
2. Immediate efforts to line up various disinterested groups (non-railroad groups, that is) behind your objectives and to articulate them on the subject.
   This activity is given a priority over direct action by the railroads since we believe that a great amount of emphasis should be placed on enlisting third party groups to carry the ball for you. It should be the keystone of your campaign. In other words, by having others talk about the menace of heavy, overloaded trucks we get away from adverse public reaction to a story which, if pushed initially by the rail-

roads would simply be an attack on a competitor with a distinct flavor of "griping" or "poor me—look what they are letting the other fellow get away with."

a. Women's clubs

b. Civic groups

c. Taxpayer groups

d. Safety organizations—both local and state

e. Railroad suppliers and others with a direct pocketbook interest in the success of your endeavors

3. An education program not only to the above groups but to those with a more immediate interest in the situation:

a. Railroad employees

b. Railroad stockholders

c. Insurance companies holding railroad securities

4. Introduction of appropriate legislation in the legislatures of the states involved (or lining up a demand for enforcement of existing statutes if that is called for).

5. Advertising as a follow up—to be used to point up issues and to bolster the ground swell of public clamor for action that would be created by items 1, 2, 3 and 4 above. In other words, we believe that advertising might sound too much like special pleading if it were used to launch the campaigns and that it will come much more naturally at some later stage in the program.

We were asked by Mr. Deegan to suggest the fee which Selvage & Lee would expect for handling a program of this

scope. We operate on a fee plus out-of-pocket expenses basis and it is a point of pride with us that we spend a client's money as carefully and as wisely as though it were our own. A normal fee for an undertaking such as you have in mind would be $5,000 per month, though, as we told Mr. Deegan, the fee is secondary in this case because it is a job we want to do.

We do not believe we should attempt to suggest an over-all budget at this time.

Summary

We believe your projected program fits in amazingly well with our organization and that we have already a knowledge of the problem that it would take others months to acquire. Mr. Selvage expects to make this program, and the marshaling of the supply industry back of it, his primary responsibility both as to long-range planning and day-to-day supervision.

Beyond that there is little more than we can say except to reiterate the hope that you will select us for this assignment.

EXHIBIT P-199.

REPORT OF SUB-COMMITTEE ON PUBLIC RELATIONS

The eastern railroads are deeply concerned with the diversion of heavy inter-city freight traffic to the highways. It is felt that this diversion is not justified by the comparative economy between rail and highway transportation but rather that it has resulted from public policy which levies all cost of railroad transportation on the companies which operate the railroads and in turn on the patrons of railroad service. On the other hand the cost of building and maintaining highways used by inter-city trucks is borne principally by tax-paying citizens rather than by the operators or patrons of the service.

The result is obvious and well-known to all the executives in this room. To state it briefly, the charges for inter-city truck transportation do not reflect the true cost of the service and thus are often deceptively low. In a time of wide-spread corporate cost-cutting, this deceptive price tag has poured a heavy volume of freight traffic on the nation's highways which were never built to handle it.

The highways have been largely broken up by this inordinate accession of traffic—and they can never be repaired and maintained adequately with present revenues from highway users unless, (1) charges for commercial use of the highways by heavy vehicles are raised to a point commensurate with the damage their vehicles do to the highways, (2) unless present limitations on the weight and size of commercial vehicles are more rigidly enforced—and (3) unless size and weight limitations are adjusted.

The true cost of building and maintaining highways for use by heavy commercial vehicles should be assessed against such vehicles.

This would eliminate the unfair shifting of those true costs onto the tax-paying citizens and off the patron of the service. Thus the result would be an equitable competitive basis between the rails and the highways.

If the foregoing premise is correct, it is the recommendation of this committee that the following things should be done:

That the subcommittee on research provide the subcommittee on public relations with the following basic information:

1. The conclusion of the Illinois and California studies, or any other objective source available without additional study, as to what compensatory charges for the use of highways by heavy vehicles ought to be—compared to *actual* charges in each of the 17 Eastern states.

2. The conclusion from any other objective and official source, now available, as to what proper limitations on the size and weight of motor trucks ought to be, in the public interest—compared with the actual limitations in each of the 17 Eastern states.

3. Information as to what would constitute adequate machinery of enforcement of limitations on weight and size of motor vehicles; the status of enforcement of such limitations in the 17 Eastern states; and an official statement, if available, as to what the machinery for adequate enforcement ought to be.

4. The status of so-called "reciprocity" as to motor vehicle fees in the 17 Eastern states, with statements from official sources, if available, about the undesirability from the standpoint of public interest, of the extension of "reciprocity" to long-haul vehicles, operating for profit.

5. The status as to "anti-diversion" amendments to constitution of the 17 Eastern states, and the effect of such provisions on exempting commercial highway traffic from

the payment of any part of the costs of general Governmental service.

6. Information on the legislation adopted or proposed from 1948-1949 sessions of State Legislatures affecting commercial highway transportation.

7. Information as to the use of oil fuel and lubricants by the railroads, the rate at which such consumption is growing—together if possible, with comparative figures on the purchase of these products for use in the heavier commercial vehicles; and comparative information on the importance to the manufacturing industry of diesel locomotives and heavy trucks.

8. Information as to the comparative original and upkeep cost and present state of preservation of highways from which trucks have been barred—contrasted with similar figures on comparable highways which trucks have been free to use.

9. The best figures to show the volume of inter-city traffic by highways in comparison with railroad ton miles broken down by states if possible; together with comparative revenue figures.

10. The summary of the most recent position of the Federal Roads Administration on the question of damage to the highways by trucks of excessive weight and the remedies for this situation, if any, either expressed or implied by the Federal Roads Administration.

11. Such information, as is available, on the development of toll roads in the various states, particularly in the east.

12. Any and all other provocative and pertinent information which the subcommittee on public relations can use effectively in dramatizing the competitive inequities of this problem.

It is the judgment of the subcommittee on public relations that while our interests involve 17 states, this campaign should be concentrated first in two or three important states where the competitive inequities are most evident. If our campaign develops a pattern in each of these two or three states, the other states would be brought into the program as the campaign develops. From a public relations standpoint, your committee feels that these states should be New York, New Jersey and Ohio.

We further feel that this entire campaign whether it be one state or seventeen, should be governed by what we shall call the "Third Person Technique." That is to say that the battle for public opinion will be waged by public interest groups other than the railroads. For example, State Railroad Associations, Taxpayers' Groups, Railroad Employees Associations, Safety Councils, Parent Teachers Associations, Chambers of Commerce, Railway Suppliers, and other public-spirited organizations with a selfish local interest. The emphasis at all times would be placed upon the selfish local interest of the individual tax-paying citizen, or family motorist, inasmuch as your committee believes that in matters such as these, the man in the street is unsympathetic to the railroads or for that matter any large public utility. The appeal throughout the campaign will be to two phases of human interest—a man's pocketbook and his safety.

Although the campaign in each state will by necessity be guided by the nuances of the local circumstances in that state, the general theme and objectives of the campaign will be set, with the approval of the railroad executives, by the Policy Committee, based on recommendations by the Public Relations Committee. Hence, in the execution of this campaign, we feel it is essential that a so-called pilot plant be established and tried in the first of the key states using the aforementioned techniques as well as the usual public relations devices with the various media of com-

munication. These would include of course, newspapers, magazines, radio, news releases, television and direct mail.

We visualize it will embrace both the editorial word and the paid advertising word. We also recommend the establishment of a public speaking bureau which would be extremely effective in building favorable public opinion by word of mouth.

Your committee also recognizes that unlike the usual public relations campaign to build good-will for a commercial enterprise, this one is unique in that it must not only build the good-will but also "close the sale" which, through the guidance of our Committee on Counsel, will effect the necessary legislation or taxation. In this regard, we recommend that the Public Relations Committee and the Committee on Counsel work closely together in the various communities involved.

It is the judgment of the Public Relations Committee that a responsible and qualified agency be retained to work full time with the members of the Public Relations Committee on developing minutely all the details of the so-called pilot plant. It is further recommended that such an agency be augmented by a small staff of full time paid personnel to begin immediately the analysis of material provided us by the Research Committee and to assist in the time-consuming job of negotiating with our allies—State Railroad Associations, Tax-paying Groups, Safety Councils, etc.

In conclusion we recommend a campaign budget to cover the three states aforementioned on the basis which we earnestly contemplate of $500,000 and that an initial budget (included in this total) of $100,000 should be appropriated to cover staff expenses through the summer months.

EXHIBIT P-231.

EASTERN RAILROAD PRESIDENTS CONFERENCE RESEARCH COMMITTEE

June 20, 1951

Mr. Walter Tuohy, Chairman,
Special Transportation Committee.

Dear Mr. Tuohy:

Activities of the Research Committee for the past two years:

1. Three thousand pages of material relating to the commercial operation of big trucks on public highways have been assembled in twenty volumes and distributed during the past two years to members of the Policy, Public Relations, Legal, and Research Committees—also to the various State Railroad Associations in the 17 Northeastern states, several railroad brotherhoods, railroad executives, and the Carl Byoir group.

2. No two states follow the same program in dealing with the big truck situation. To give the railroads of each of the 17 Northeastern states the benefit of the activities in the other 16 states a special distribution has been made every few days during legislative sessions. As a result, good points advocated by a particular state have, in some instances, been adopted by other states.

3. Special distribution was made of the New York mileage tax act.

4. Much material has been collected showing enforcement activities in each of the 17 Northeastern states—maps prepared showing location of weighing stations. This survey indicates that no state has enough weighing equipment and most states are using outmoded scales. There is great need for more equipment and more enforcement. State administrations are realizing more their responsibility in the use of public property for

private profit, but there is a big field for further progress along this line.

5. Maryland road tests were checked by engineers and distribution made of all available material regarding these tests.

6. Several meetings held between the three Chairmen of the Subcommittees and the Automobile Manufacturers Association. Reports were prepared showing areas in which there was agreement and also areas of disagreement.

7. Research Committee has acted more or less as liaison between State Railroad Associations and the Carl Byoir group. In June, 1949, the Policy Committee named the states of New Jersey, New York and Ohio as trial states. The Carl Byoir group, under the direction of Mr. Girdler, placed the facts before state administrations and otherwise gave the states a vast amount of help, resulting in favorable truck legislation in New Jersey and New York.

8. The Mileage Tax Bill, which passed the New York legislature in April of this year, was of outstanding importance. This is the first state east of the Mississippi to put a substantial mileage tax on trucks. Other states are watching this development. The New York authorities advise that they expect to build 50 weighing stations scattered throughout the State.

9. After the New York Bill passed, the Carl Byoir people concentrated on Ohio. A Bill was passed increasing truck license fees about 30%. There is much more to be accomplished and the campaign will be resumed at the next session of the legislature.

10. The first of June, the Railroads of Pennsylvania unanimously requested the help of the Carl Byoir people, and a man has been assigned.

11. The Security Research Bureau of Philadelphia has called on the Committee for material on the truck situa-

tion. This Bureau is financed by a group of banks and financial houses along the Eastern seaboard. Its sole function is to advise these financial houses about railroad securities. The Bureau has recently put out a comprehensive report indicating that some of the competitive inequalities between railroads and long-haul trucks are being adjusted by legislative action.

12. Studies made to show that a gallon of diesel oil produces on the railroad seven times as many ton-miles as a gallon of gasoline consumed by trucks on the highway.

13. Information collected showing that Eastern Railroads made the following purchases during 1949—

from automobile industry	$106,535,000
from petroleum industry	83,007,000
from rubber industry	5,374,000
	$194,916,000

The purchases from petroleum industry are greater than the purchases made by the long-haul trucks in the 17 northeastern states.

Yours very truly,

H. W. Dorigan
N & H

R. M. Edgar
B & M

J. M. Fitzgerald
VPERPC

C. W. Meyer
Div oper-research C & O

F. N. Nye
NYC

B. S. Voorhees
NYC VP

R. J. Littlefield,
Chairman.

EXHIBIT P-282.

VETO NO. 48

January 21, 1952

SENATE BILL 615

I file herewith in the Office of the Secretary of the Commonwealth with my objections Senate Bill No. 615, Printer's No. 511, entitled "An Act to further amend the act, approved May 1, 1929 (PL 905), entitled 'An Act for the protection of the public safety, regulating the use of highways, and the operation of vehicles, tractors, street cars, trackless trolley omnibuses, bicycles, pedestrians, and the riding of animals upon the highways, of this Commonwealth; providing for the titling, including liens, encumbrances, and legal claims; registration of certain vehicles and licensing the operators thereof, upon payment of prescribed fees; prescribing and limiting the powers of local authorities to deal with the subject matter of this act; conferring powers and imposing duties upon the Department of Revenue, the Department of Highways, peace officers, mayors, burgesses, magistrates, aldermen, justices of peace, the courts and the clerks thereof, owners of vehicles, and garage keepers; providing that records are admissible as evidence; imposing upon owners, counties, cities, boroughs, incorporated towns, townships, within the Commonwealth, liability for damages caused by the negligent operation of their motor vehicles; imposing penalties; imposing certain costs upon counties; providing for the disposition of fines, forfeitures, fees and miscellaneous receipts; making an appropriation and providing for refunds;' by increasing annual registration fees for certain commercial motor vehicles, truck tractors, trailers and semi-trailers; prescribing additional equipment requirements for certain vehicles; increasing the maximum gross weights and axle loads al-

lowed for certain vehicles; changing the requirements for weighing vehicles and removal of excess loads; prescribing and changing penalties; providing that certain penalties shall be enforced by liens upon vehicles and the sale of such vehicles, free of all liens and encumbrances, and imposing duties upon operators, owners, magistrates and sheriffs."

This bill would amend the Vehicle Code, Act of May 1st, 1929 (PL 905), among other things, by increasing the permissible gross loads of various classes of commercial vehicles and combinations of motor vehicles and trailers, truck tractors, and semi-trailers, as well as the permissible tandem axle loads. (SEE FOOTNOTE (1))

Being mindful of the observations of Mr. Chief Justice Gibson over a century ago, that in Pennsylvania the highway "is the property of the people, not a particular district, but of the whole State", (Philadelphia & Trenton Railroad Company 6 Wharton 25, 43 (1840)), I was motivated by the strong and determined opposition to this bill to call a public hearing, to enable the opponents and proponents thereof to present their respective views before making a final decision, either to approve or disapprove it.

A hearing was held in the Executive Office at the State Capitol on Thursday, January 17th, 1952. A myriad of views were presented by representatives of various civic, municipal, labor, industrial, and railway organizations, and the trucking industry of Pennsylvania itself.

I am fully mindful that the trucking industry plays a significant and important role in the economic and community affairs not only of this Commonwealth, but also in the entire Nation. I am not convinced that it pays its just share of the maintenance of our public highway system.

I am also mindful of the possible destructive effects which, as demonstrated by the tentative findings of the Highway Research Board of the National Academy of Sciences, based on actual tests during the last year and a half on a section of highway built by the State of Maryland

in 1941, may result from the increase of permissible gross and axle loads.

I should point out, however, that all of the information available to me was *not* available to the Legislature when this bill was being considered by it.

Ordinarily, in such a matter as this I would feel constrained to accept the legislative views, but after careful and thorough consideration, especially in view of the critical shortage of materials which are used in highway construction projects, I am convinced that the wisdom of subjecting our highway system—a $1,700,000,000 investment—to additional burdens should be carefully considered by the Legislature in the light of the final findings and recommendations of the Highway Research Board, which unfortunately will be published too late for me to consider. If the Legislature in the light of the final report and recommendations of the Highway Research Board, as well as other matters which I mentioned herein, again adopts the basic policy of this bill, I would hardly have any choice in the matter, for the Supreme Court has stated that:

> "it is for the Commonwealth acting through the Legislature to direct conditions in which * * * (the) right (to use the highway) shall be exercised." (Commonwealth versus Funk 323 Pa., 390, 394, 395 (1896)).

Deferring the policy of this bill will not in the meantime seriously handicap the trucking industry of this Commonwealth during the period of time required for further legislative consideration—a year. The tandem axle weight allowed by this bill, I am informed, will be lawful only in a very few States.

This bill contains some inconsistencies, for instance: I am informed that the permissible gross of Classes Y, Z, and ZZ can only be attained by exceeding the permissible axle load, which, of course, is not a desirable situation.

(See Footnote (2))

Furthermore, the $25 fine provided by this bill for violations of the permissible axle load—in my opinion, a very serious matter,—is woefully inadequate as an effective deterrent.

Last but not least, legislation of this nature should contain specific limitations predicated on all of the factors generally regarded by public highway authorities as related to the preservation of our *entire* highway system, including not only primary, but also the secondary and rural facilities. In short, it should be made just as unprofitable for a vehicle or combination to violate load restrictions on posted highways and bridge facilities imposed by the Secretary of Highways and local authorities, pursuant to law, as to violate the permissible gross load which this bill would establish. This bill is entirely inadequate in that respect.

For these reasons the bill is not approved.

(Signed) JOHN S. FINE,
Governor.

FOOTNOTES

(1)—Theoretically, tandem axle loads are not increased by this bill, but actually, however, under the presently existing permissible gross, it would be impossible, if the loads were properly distributed, to obtain a load of 36,000 pounds on a tandem axle of a semi-trailer.

(2)—This very bill would impose a fine of $100.00, plus $2.00 for each 100 pounds or fraction thereof, for violation of the permissible gross by a combination of truck-tractor and tandem-axle semi-trailer.

TAX RESEARCH AND SURVEYS

EDWARD D. ODENBAUGH
Corporate Tax Service

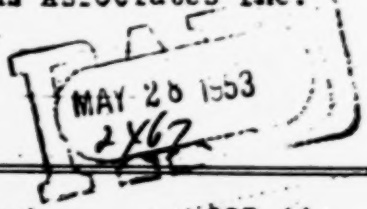
ANALYTICAL STUDIES AND REPORTS

11823 JOAN DRIVE
PITTSBURGH 35, PENNSYLVANIA

Telephone
CHurchill 1-7657

April 1, 1953

TO Allied Public Relations Associates Inc.
745 Fifth Avenue
New York 22, N.Y.



Professional Services, month of March $623.44

Researching and preparing memoranda February 26 to March 4,1953 covering four confidential documents of political nature consisting of thirty legal size single spaced typed pages ~~at request of Mr.Paynter~~, and incidental expenses incurred in performance of above services including long-distance phone calls to Philadelphia and New York, typing expense, postage, and research expense and entertainment expense..... $234.60

Arranging for and participating in conferences at State College March 18 and 19,1953 with Mr.Charnay, Mr.Paynter, Mr.Dietrich, ~~and Sheriff Whitten of Pittsburgh~~, 3 days..... $150.00

Researching and preparing confidential dossier ~~of political nature~~ March 20 to 28,1953, ~~requested by Mr.Charnay at State~~ College conference March 18,1953, consisting of eight single spaced typed pages, and incidental expenses incurred

(continued)

TAX RESEARCH AND SURVEYS

EDWARD D. ODENBAUGH
Corporate Tax Service

ANALYTICAL STUDIES AND REPORTS

11823 JOAN DRIVE
PITTSBURGH 35, PENNSYLVANIA

Telephone
CHurchill 1-7697

April 1, 1953

TO Allied Public Relations Associates Inc.
745 Fifth Avenue
New York 22, N.Y.

(Page Two)

Professional Services $

thereto including long distance phone calls to New York, Typing expense, entertainment and research expense.....$138.84

For services rendered in conferences with Mr. Paynter at New York March 29, 1953 re above confidential documents, and other matters in the interest of PMTA, 1½ days.....$100.00

Total $623.44

MAY 28 1953
2462

BKWP ARRA
PMTA 623.44

8 87

EXHIBIT D-25.

NEW YORK WASHINGTO

HILL AND KNOWLTON, INC.
Public Relations Counsel
EMPIRE STATE BUILDING, NEW YORK 1, N. Y.

JOHN W. HILL

July 12, 1949

Mr. Thomas J. Deegan, Jr.
Vice President-Public Relations
The Chesapeake and Ohio Railway Company
405 Lexington Avenue
New York 17, New York

Dear Mr. Deegan:

This letter will confirm my statement in your office on July 5 that Hill and Knowlton, Inc. would be glad to be considered for the assignment which you outlined on behalf of the Eastern Railroads.

It is my understanding that the public relations firm to be retained will be charged with the dual responsibility of marshalling both public and legislative support in 17 states for some form of strict regulation of the use of heavy trucks on public highways. The purpose of this proposed legislation is to correct the unfair competitive advantages which heavy trucks now have over the railroads.

If retained for this work our first step would be to make a comprehensive study of all aspects of the problem as a basis for developing detailed recommendations to your committee for a campaign of action.

Your suggestion that the campaign be limited to a pilot operation in a small number of states seems sound to us, and our initial proposals would be on this basis.

Since the success of the campaign will depend in large measure upon the support given the railroads by other

groups and organizations, one of our first efforts would be to discover all the present and potential allies in the fight on heavy trucks. All possibilities would be explored, including public officials, trade and civic groups, taxpayer organizations, safety groups, educators, parent-teacher groups, labor unions, motorists, airlines and many others.

There are many indications that the time is now ripe for the Eastern Railroads to lead an organized attack on the heavy truck evil. The failure of the heavy truck operators to do anything to lessen the elements of public inconvenience, the nuisance, and the evils of these mammoth vehicles, has already resulted in widespread resentment against them, and has brought forth attacks from such powerful organizations as the American Automobile Association. In February that Association called attention to the "unconscionable damage" our roads are sustaining because of the operations of a small segment of the trucking industry. Their statement urged cooperation of all groups in an "all-out drive to protect the highway investment" and urged action by state legislatures.

In addition, certain public officials have joined the attack. The federal commissioner of public roads stated in a recent speech that heavy trucks were "causing a destructive waste of highway funds." At the moment the taxpayers in the vicinity of Darien, Conn., are complaining bitterly over plans to expend $2,000,000 to accommodate various underpasses to large trucks. The piling up of this kind of public criticism is helping to prepare the public mind for your proposed campaign.

We are heartily in accord with the decision to carry on the campaign under the forthright sponsorship of the Eastern Railroads. At the same time, it may be necessary in practice to have a rallying point for the activity in the form of a distinctive organization or "Committee"—the chief sponsor of which will be publicly known at all times as the Eastern Railroads. The name of the "Committee" should imply a *positive* program, expressing in short popular

slogan form the gist of the legislative objectives. This device would facilitate and simplify the participation in various ways of other groups in the program of activities.

The campaign should utilize in every way possible the many individuals, groups, organizations and facilities through which the railroads have contact with the public and the opportunity to win public opinion. It is to be assumed that the railroad brotherhoods would be natural allies in this effort. Any representation which the railroads maintain at the state capitals also logically would be available for effective cooperation.

In developing the campaign it will be necessary to do everything possible to counteract the charge that the fight is one between the railroad "octopus" and "little fellows" in the trucking business. Trucking interests have have always carefully preserved the fictitious idea that they are small business and that any attack upon trucking is an attack upon small business. It should be possible to strip large truck operators of their "little business" cloak, and to show that genuine little fellows who operate small trucks are under no attack, but actually are one of the victims of the heavy trucks.

It is understood that the development of the basic legislative objectives is a problem for your research and legal committees. We should observe, however, that adequate allowance for public relations considerations in the planning of these objectives is essential to a successful campaign. For example, if the basic legislative objectives were similar to, or a logical extension of, the principles contained in the Code of the state highway officials, which is supported by the American Automobile Association, the task of winning public acceptance would be greatly simplified. A legislative program not in harmony with this Code would obviously require a more intensified and costly campaign. The framing of the basic policy objectives should also, if possible, take into consideration the views of politically powerful groups such as the Teamsters Union, and the farmers. If

the campaign can claim a saving of wear and tear on public highways and roads, and in taxes for the farmers, and in increased job opportunities for the teamsters in small trucks, it may be possible to win over or conciliate both of these powerful groups.

Essential to the success of the campaign will be a completely non-technical and popular presentation of the problem to the public. The job will be to dramatize popular emotional appeals around such ideas as the road nuisance created by large trucks, their menace to motoring safety, their damage to roads and their subsidization by the taxpayer's dollar.

The campaign, of course, will involve intensive grass roots work throughout each of the states where the program is in operation. Men in the field must be competent to contact newspapers and local groups of all kinds, arrange meetings, plan talks for others and make talks themselves. Men at the state capitals must also be skilled in legislative contacts.

In order to supply tools for these field forces, adequate materials must be produced in the form of publicity, speeches, leaflets, booklets, material for radio and television, visual presentations for use before civic groups, etc. As part of the job, advertisements in local newspapers throughout the state when the campaign is being conducted will be necessary.

Hill and Knowlton, Inc. has had extensive experience in dealing with similar public relations and legislative problems both on national and state levels. It has conceived and helped formulate basic strategy and actually executed the detailed activities in such programs as the following:

1. The program for a national air policy resulting in the establishment of the President's Air Policy Commission and enactment of the Congressional Air Policy Board (for the Aircraft Industries Association).

2. The campaign in 44 state legislatures, as well as before the Congress to protect butter against the unfair competition of yellow-colored oleomargarine in imitation of butter. The fort has been held in this fight in the Congress, confounding many predictions to the contrary. In state legislatures prior to 1949 a trend had developed towards repeal of restrictions on oleo, but the policy and program presented to 1949 legislative sessions for the first time resulted in an overwhelming margin for butter.

3. The campaign against unduly restrictive wartime or OPA prices (for the National Retail Dry Goods Association).

4. The campaign against government fertilizer plants (for the National Fertilizer Association).

5. Some years ago, as counsel for the Ohio Oil Industry's Information Committee, our firm operated in Columbus, in fighting gasoline tax increases.

Hill and Knowlton, Inc. is counsel for a number of large industry associations and corporations. We have a staff of more than 70 people with supervisory and producing staff at headquarters in New York, and a field staff at various points. An office is maintained in Washington under the direction of a vice president of the firm, and field offices are located in Pittsburgh, Chicago, and Cleveland, with staff representatives in Cincinnati and Los Angeles.

The cost of the operation over and above the fee would depend upon the number and caliber of the men in the field, the amount of and cost of materials and numerous other factors. In the absence of a detailed program, obviously no exact estimate is possible. The success of the job will depend on the competence of the men in the field and upon the quality of supervision. Also, within the limits of reason, the more men in the field, the more intensively the grass

roots will be cultivated. Of the three states suggested, New York and New Jersey have regular legislative sessions in 1950, while the next regular legislative session for Ohio convenes in 1951. Probably it would not be necessary to put men in the field in Ohio until next year, one of the variable factors affecting costs.

Since your initial appropriation covers the period to next January, I assume you want an estimate of costs for the final five months of the year starting as of August 1. Our rough estimate is that the cost of the public relations operation for that period would range from $120,000 to $130,000. The actual operating experience of these months will provide a basis for more exact estimates for the future. We operate on a monthly or annual fee, plus all out-of-pocket expenses, the amount of the fee being based on the nature of the operation and the degree of responsibility involved. Your assignment calls for counsel to assume responsibility for the planning and execution of the program from grass roots publicity and organization through final action by the several legislatures. On that basis our appraisal of an equitable fee would be $20,830 to the end of this year, or at the annual rate of $50,000. Although during the "pilot" period the operation would not be as extensive in scope as when the program is in full swing in all the other states, yet that initial period is crucial and will set the pattern for the entire program.

As you know, our firm produces and places institutional and public relations advertising for some of our large clients, and we would be prepared to handle the advertising phases of your program, if you so desired.

If you desire any additional information on any point in this letter, please do not hesitate to call on me.

Very sincerely yours,

JOHN W. HILL
John W. Hill

JWH:rc

EXHIBIT D-26.

FRED ELDEAN ORGANIZATION
INCORPORATED
670 Fifth Avenue . New York 19, N.Y.
Eldorado 5-7651

July 13, 1949

Mr. Thomas J. Deegan, Jr.
Vice President-Public Relations
Chesapeake & Ohio Railway Company
4500 Chrysler Building
New York, New York

Dear Mr. Deegan:

Your committee is concerned with a serious problem, and you have asked us to indicate generally the approach we might use to deal with it should our organization be retained.

Basically, there are two approaches—one aimed at creating a general atmosphere of public understanding, the other directing efforts toward a specific objective. Your committee, naturally, will have to make the decision. We can follow either approach, utilizing the appropriate techniques for each. We prefer to follow the second approach of working directly toward an objective as we believe that thereby not only do we advance the objective but we also create a better and broader general atmosphere of public understanding.

Several years' experience in the Tax Foundation demonstrated repeatedly that we could get broader general tax-consciousness when we pursued a specific objective, than when we went out on a general basis of trying to make people tax conscious. Application of the same principles and techniques to the specific problems of business and industry has proven equally effective.

We like the direct-action drive to get a result. Whatever reputation we may have has been achieved by our willingness to tackle a hard-hitting job and see it through. We have specialized in this approach and our staff has had long experience in its application. The technique of intensified merchandising of ideas at the community, State and national levels, by trained public relations field operators, has been a distinguishing characteristic of this organization. In one campaign—in which only seven weeks were available—application of this technique produced the following results:

17,000 newspaper stories, with accompanying sympathetic editorials, cartoons and features.

A meeting in every county, town and hamlet in the State of New York, with 7,000 individuals paying their own way to Albany.

1,000,000 communications to the Governor.

A reversal of a 26-year trend in the State.

Defeat of a powerful and highly organized lobby, including such groups as state employees, teacher groups, road-builders, cement and other highway interests.

The result was not a mere holding of the line, it was an affirmative gain in the way of a cutback, including elimination of the State Real Estate Tax, which burdened, among others, railroad transportation in New York State. Newspapers as far as San Francisco and Los Angeles carried front-page banner headlines.

Extension of this experience was gained through several years of intensive work in furthering, developing or expanding tax organizations in thirty-eight states.

On the Federal level, experience is represented by such activities as operation of the "17 Airlines" campaign, which overcame a powerful and well-organized opposition despite their carefully laid groundwork for the objective of a "chosen instrument" or monopoly in international air

travel. At the conclusion of this campaign, Time Magazine commented:

> "Two months ago, the Senate Subcommittee seemed on the verge of recommending to Congress that the U. S. adopt a chosen instrument policy . . . . At week's end, with no more than three committee members in favor of it, the Community (chosen instrument) Company seemed dead." It was dead.

These are a few examples of a long background of experience in dealing with problems, the answers to which required ultimate legislative understanding and support. Our experience of many years, with many State legislative groups, dealing with many problems, has caused this organization to be recognized as a pioneer in the technique of the organized field approach, which we have extensively employed.

We therefore, assuming you have your objectives clear and already have your supporting data, would proceed with a field manpower organization in such selected areas as you might designate. After some preliminary groundwork and with your approval, we would start an aggressive direct-action campaign to achieve the objective. We have found that dramatic incidents help focus attention on public issues. We have consistently used this technique in other campaigns, and we would expect to do so as this campaign moved along.

In addition to utilization of the field men in the areas involved, we would also cover the general publicity media and channels to further a broad general background. We would utilize the appropriate techniques to get a full public airing of the issue before all possible forums. We believe that advertising can be used effectively when it is tied in with a direct campaign.

We recognize and have utilized spot and minimum-cost public opinion checks to get a "wind" on the direction in which

we should veer. We appreciate that there are also a number of indirect things that might be done which we would consider in laying out a concrete program.

Naturally, it would be necessary for us to have further discussion with you before attempting to outline budget requirements. It is difficult to be positive in relation to a fee as that also would require more facts than we have at the present time. Based upon our experience and the probable magnitude of the job, and assuming that we would have complete responsibility for the personnel and the conduct of this action program, our general retainer and management fee might be in the neighborhood of $75,000.00.

We would welcome any questions that might arise or further discussion with you, should that be indicated.

Sincerely yours,

FRED ELDEAN
Fred Eldean

EXHIBIT D-212.

Highlights of PMTA's Record.

1928—PMTA Charter granted and recorded May 5, individual and county groups organizing on state-wide basis as result of legislators' advice to present and sponsor unified program desired by trucking industry.

1929—Law passed boosting license fees 60% on solid tire trucks.

1930—State Headquarters opened in Harrisburg, desk space in one office (April), W. A. Sutherland, appointed general manager.

Safety program started by support of national projects.

Legal Department established.

Chapter organizations started.

1931—Law passed imposing gross receipts tax on buses and for-hire trucks.

Membership passed 500 mark.

Monthly bulletin expanded coverage to include national and state regulations and laws affecting trucking industry.

PMTA originated and began issue of "Courtesy of the Road to You Tags", in continuing safety and courtesy program.

1932—Law passed fixing a 15-day limit for reciprocity on out-of-state trucks, at special session of legislature starts PMTA on reciprocity campaign against barriers.

PMTA defeated proposed laws to:

1. Turn all motor funds over to general fund. Anti-diversion fight started.
2. Turn all gasoline taxes over to general fund.
3. Permit cities of first-class to tax each truck $100.

4. Permit other cities and boroughs to tax trucks.
Stressed value of public relations program.

1933—PMTA sponsored law to repeal the 15-day limit on out-of-state trucks was passed, first major PMTA victory for reciprocity privileges.

2500 attended PMTA sponsored Phjladelphia mass meeting protesting unreasonable restrictions on highway transportation.

PMTA directors went on record for law observance and law enforcement.

PMTA sent delegates to Chicago, took leading part in organization of American Highway Freight Association. Ted V. Rodgers, PMTA president, elected president of AHFA, retained as president in October of American Trucking Associations, formed by merger of AHFA and Federated Truck Associations.

PMTA defeated first attempt to pass law banning trucks from highways on Sundays and Holidays.

1934—First PMTA Convention held in Pittsburgh June 21 to 23.

Eastman reported on transportation—digests given.

Penntruck—PMTA name adopted for monthly bulletin in June issue.

First ATA Convention held in Chicago, October 22 to 24, many PMTA members there.

PMTA enlarged legislative committee to include additional classes of carriers.

State NRA Code for trucking industry started under National Industrial Recovery Act with PMTA members serving on Code Authority.

First use of "Courtesy of the Road to You" emblems on field representative's car shown in photos published in PMTA bulletin.

1935—Proposed laws to increase truck license fees, reduce truck size and weight limitations were defeated in legislature.

Proposed "port of entry" bill defeated.
Chapter safety committees organized.
PMTA again blocked attempt to keep trucks off roads on Sundays under old Pennsylvania "Blue Laws".
Campaign started to halt damage and destruction of highway signs.
Chart issued in colors showing lighting required on trucks.
PMTA manager named on State Department of Revenue Highway Safety Advisory Committee.
Motor Carrier Act became effective. PMTA Legal Department gave digest of requirements for interstate operators.
Pennsylvania Turnpike endorsed.

1936—PMTA members called for emergency relief service following state's worst floods.
State's new safety slogans issued.
19 radio stations used for broadcasts against tax and motor fund diversions.
PMTA issued declaration of 12-point policy. Policy Committee organized.
Officers issued news releases on weather damage to roads and against motor fund diversion to other than highway uses.
Road hazard reporting asked to correct dangerous conditions, spur repairs.
General Manager calls for constructive legislative program, reports PMTA has been through severe defensive struggles at 8 legislative sessions.

1937—Public Utility Commission law passed with major truck provisions as suggested by PMTA remaining practically unchanged.
Motor Code omnibus amendments passed with many restrictive parts removed as result of PMTA activity.

Bridge and underpass reports started after five-year effort by PMTA to have such information made available for state-wide distribution.

PMTA succeeded in obtaining amendments to wage and hour law regulations to exempt truck operators.

PMTA sponsored broad reciprocity law was approved.

W. A. Sutherland, first PMTA general manager, resigned.

1938—PMTA urged change in license year end to March 31.

PUC asked PMTA assistance in new uniform rate setup.

Survey made on tolls in Holland tunnel and George Washington Bridge to get reductions.

PUC adopted most of PMTA recommendations in revision of its General Order 29.

Maintenance division gave efficiency and economy tips.

Truck drivers given nine suggestions for improved, efficient operation.

PMTA organized Highway Safety Division, subsequently designated as Accident Prevention Division.

1939—PMTA won first stay in banning car carriers.

"U"-weight increased from 13,000 to 15,000 pounds.

Sunday and Holiday ban again defeated.

Public Relations Division established.

PMTA won for first time the ATA trophy in National Truck Safety Campaign.

First Roadeo held October 14 at State Farm Show grounds.

Business Tips classification started in "Penntrux" enlarging service started several years earlier in bulletins to PMTA members.

1940—PENNTRUX name adopted with January issue, Vol. VII, No. 1.
Telegram sent to Federal officials pledging PMTA support of national defense.
State Headquarters enlarged to four rooms.
Safety caravan tour sponsored, headed by State's first champion safe truck driver, PMTA sponsored; ended at Conneaut Lake, 2nd Roadeo.
PMTA won ATA Safety trophy a second time.
ATA started National advertising campaign of general value to trucking industry.
Pennsylvania Turnpike opened.

1941—"Singing Wheels" movie on trucking industry by Motor Truck Committee of Automobile Manufacturers' Association, shown first in Pennsylvania February 19 to Philadelphia Chapter PMTA.
Long battle in Legislature for "full load" truck bill in which PMTA was entirely cleared of anti-trucking attacks. Bill finally passed by Senate and House but vetoed by Governor James.
PMTA mass meeting held in Harrisburg, August 25 to protest veto.
Third Roadeo held at Indiantown Gap.
PMTA effected toll savings for members through volume use of Pennsylvania Turnpike.
PMTA at start of War December 7, at once began quick service to members on all developments affecting trucking industry.
Car carrier ban postponed a second time.

1942—PMTA obtained rate increases for truck operators on parity with increased rates granted railroads.
First Weekly Service Letter issued February 16.
PMTA cooperated with Civilian Defense Organization.
PMTA supported war bond drives.
PMTA Exhibit at Farm Show drew record crowds.

PMTA cooperated with ODT on conservation of motor equipment.

New railroad attempt to limit truck hauls to 300 miles defeated.

1943—Legislative Session results most successful in PMTA history.

"Full-Load" bill increasing weight limits temporarily passed.

Half-ton truck fees reduced.

Car carrier ban stayed for the third time.

Bill passed for vote on constitutional amendment to halt diversion of motor funds.

PMTA members warned of railroad propaganda for domination of transportation field through integrated systems to operate all rail, motor, water and transportation facilities in large geographic areas.

Monthly Progress Report of PMTA accomplishments started in Penntrux.

Won permanent possession of ATA safety trophy.

1944—Membership campaign organized to increase effectiveness of PMTA and push post-war plans.

PMTA gave continued assistance to all Federal agencies in war program, aided members in manpower, tire, gas rationing crises.

Legislative plans mapped for 1945.

Asked Chambers of Commerce not to pass railroad backed transport integration resolutions.

1945—Law passed by Pennsylvania Legislature to make temporary weight gains of 1943 permanent.

Law passed repealing 1937 legislation which banned car carriers from highways.

Anti-diversion amendment act passed again putting question on November ballot.

Voters in November passed amendment 6 to 1 to prohibit diversion of motor funds to other than highway use.

Postwar Planning Conference held by PMTA in Harrisburg.

1946—Golden jubilee of automotive transportation marked.
Six PMTA members elected as officers of ATA.
W. C. Solly appointed service director, new department of PMTA which now handles directly all personal services required by members.
Revenue Department approved reflector type flares authorized in PMTA sponsored law passed in 1945.
PMTA participated fully in Courtesy and Safety Campaign of ATA.
PMTA cooperated fully with State Police in safety campaign.

1947—Prepared 12 advertisements for truck owner use in local communities.
Inaugurated "Driver of the Month" awards.
Obtained passage of Tandem Axle Semi-Trailer Bill in House, but bill was blocked in Senate Highways Committee.
Obtained law to eliminate requirement of engine number for truck identity.
Penntrux complete issue in new format September 20 with expansion of Publications Department and installation of new equipment.

1948—U. S. Army called on PMTA to aid in forming Organized Reserve Corps Army Transportation Division in Pennsylvania.
New PMTA Accounting Division organized.
Safety and Accident Prevention Campaign mapped with definite goals set.
Legislative policy plans started in early Spring looking toward '49 session.
New Research Department established.

5/19/48
RS

PENNSY R R PLOTS AGAINST FARMERS AND THE GRANGE

WHEW
PENNSYLVANIA RAILROAD
DUPED STATE GRANGE OFFICIAL
HONEST GRANGER
BRUCE TAYLOR

THE PENNSYLVANIA RAILROAD through its agents, asked Uncle Sam to hold up costs to Pennsylvania farmers. The state's worst tax free rider, the railroad uses your money for slush funds to try to deceive the Grange, to cheat the farmer. A Grange demonstration inspired by a railroad undercover agent preceded Governor Fine's veto of a bill which would have lowered costs for honest Grangers. Can Pennsy's money exacted from farmers nullify the Pennsylvania State Legislature? Read what YOU can do about this scandal.

Exhibit D-61

Exhibit

233b

How the Pennsylvania Railroad Preys on Farmers — Coming and Going! The Facts:

Paul G. Miller is a truckman doing business at Shippensburg, Pa. In a highly competitive business, he found out how he could haul 20,000 pound loads of fertilizer from the Baltimore area and deliver it to farmers in Dauphin and Cumberland counties at a fair price for a 20,000 pound load. His farmer customers were satisfied. He competes with other truckmen, but his principal competitor is the Pennsylvania Railroad.

Then certain restrictions and complications developed, so that he could not legally deliver a 20,000-pound load, on which he could have made a satisfactory earning at the low rates, but could only deliver a part-load of 16,000 pounds. **(Why he was confronted with these restrictions is a story all by itself which we will come to in a moment.)**

But Miller stuck with it. He wanted the business and wanted to hold down his prices to farmer customers. So he went back to the Interstate Commerce Commission and asked Uncle Sam to let him charge the farmers (for a less profitable part load of 16,000 pounds), the same pound-rate he was charging for 20,000 pounds.

But something happened. The Eastern Railroads entered a legal objection to say that if Miller was permitted to charge this low rate to the farmer for a part load of fertilizer THE RAILROADS WOULD HAVE TO LOWER THEIR RATES FOR CARRYING FERTILIZER, NOT ONLY IN THIS AREA, BUT TO AND FROM MANY OTHER POINTS.

The dominating power in Eastern Railroads in the Pennsylvania area is the Pennsylvania Railroad. The Eastern Railroads for this purpose is a lobbying organization, *serving the interests of the Pennsylvania Railroad.*

Now remember how the Pennsylvania Railroad feels about the Pennsylvania farmer: the railroad is scared to death it may have to lower fertilizer rates. This clearly establishes, on the Federal records, its basic feelings.

Now what is the 20,000- pound—16,000-pound business? Pennsylvania has a mixed up hodge podge of regulations the effect of which is to make it hard to operate motor trucks at a fair profit. Who gains from this hodge-podge? The Pennsylvania Railroad. It can keep up its high freight rates against the Pennsylvania farmer, business man and consumer, *if it can keep the truckmen from operating efficiently.*

It is plain common sense that if it costs the truckman more to operate, the higher cost will be passed on to the

FEDERAL COURT EVIDENCE TELLS HOW BYOIR KILLS LEGISLATION

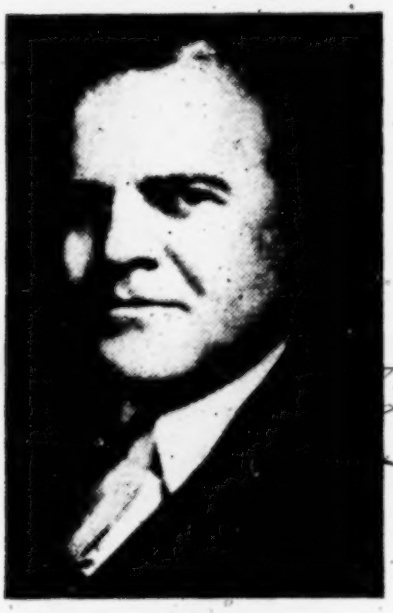
Carl Byoir and his agents have been in and out of Congressional investigations and Federal Court proceedings over a long period of time. In a proceeding in Federal Court for using "false front organizations" in a conspiracy to restrain and monopolize trade, he was found guilty and fined $5,000. In that matter as in this he had invented and used phoney organizations and had misused some good ones.

Some methods used in a Byoir Campaign were disclosed in a letter introduced in evidence describing the Washington lobbying procedures. The letter said, in part:

"I enjoyed (please destroy when you read) most of the shippers I met. The two cowboys from Texas, Mr. . . . . and . . . . . were the . . . *drinkers*, never stopped . . . They were dined at noon by C. Byoir because of their importance. I had them to ball game and they were drinking then even and also killed a bottle the morning they went on the witness stand.

"*Some wanted the other sex and had it, because plenty available at all hours . . .*"

HOW PENNSYLVANIA RAILROAD PREYS ON FARMERS: FERTILIZER PROFITS USED TO CHEAT THE GRANGE!



BYOIR

Joab K. Mahood, for years paid executive secretary of the State Grange, permitted undercover railroad agent C. Colburn Hardy (right) to let Hardy use Mahood's office to send out undercover propaganda to deceive Grange members to act against their own real interests. Hardy's activities deceiving the Grange were directed by his boss, Carl Byoir (left), paid by the railroads.

HARDY

HOW THE PENNSYLVANIA RAILROAD PREYS ON FARMERS

(Continued from Preceding Page)

of the Commonwealth, pass a law that by making efficient trucking possible, would lower the cost of fertilizer to farmers and thus force the Pennsylvania Railroad to lower the high charges it levies upon the businessmen, consumers and farmers of the State.

(The Pennsylvania Railroad is used to soaking the citizens of Pennsylvania—for it has managed, without specific exemptive laws, to avoid paying taxes in Pennsylvania that it pays in other states.)

What to do? How could the railroad defeat the Legislature's "Fair Truck Law"?

Well, it would be necessary to stir up some outcry from the Grange and from other organizations *supposed to repre-*

amounts of good hard money. But always the same pattern—hundreds of thousands of dollars used in slush funds to deceive worthy organizations to defeat the public will.

So Pennsylvania Railroad, the dominant interest in Eastern Railroads, had Eastern Railroads hire Byoir.

Byoir carpetbaggers descended upon Harrisburg and moved into the offices of the Grange and other organizations supposed to protect the citizens. They had orders to "kill the Fair Truck Bill at any cost" and plenty of money to do it with. The whole shocking story will come out in due time but just now we are talking only about the Grange.

Remember, the Pennsylvania Railroad wants to charge the farmers of Pennsylvania MORE for fertilizer. Remem-

GET A WHIFF OF THIS! WHE - EW!

(Continued from Preceding Page)

protests of farmers AGAINST the Fair Truck Bill. After a hearing unlike any in history, and in which other secret agents worked upon other organizations, Governor Fine, assuming a genuine and honest protest was involved vetoed the bill

A former Byoir agent, Hardy Burt, wrote vicious and misleading propaganda in the National Grange monthly, *which published appropriate railroad advertising.*

So the hodge podge of laws that make it necessary for truckmen to try to make a profit on delivering half a load of fertilizer at a time are still in effect.

The Pennsylvania Railroad with one hand is holding up the farmer, trying to get Uncle Sam to uphold high shipping rates for fertilizer. With the other hand, the Pennsylvania Railroad shells out slush money to deceive the Grange and other organizations representing the farmer's interest.

How do you like that! Well, if you *don't* like it, there's a lot you *can* do about it.

First, ask your National Grange officers to investigate the State Grange Office in Harrisburg, to find out who let the Pennsylvania Railroad, in the person of Undercover Agent Hardy, deceive the Grange.

Then, write the two U. S. Senators from Pennsylvania and your Congressman and ask them:

1. For an investigation of Pennsylvania Railroad's underhanded effort to subvert the Grange. (And ask for public hearings.)

2. To find out who was on the taking end of the railroads' huge slush fund.

3. To find out why Pennsylvania Railroad doesn't have to pay its share of the State's real estate taxes (which it pays in other states). (If it pays up all its share of real estate taxes, for better rural schools, roads, and bridges, maybe it won't have slush fund money to use against the farmer.)

And

4. Write Governor Fine and ask him to have the State's authorities investigate how many of the organizations that protested against the Fair Truck Bill were activated by Byoir stooges paid by the railroads' slush funds.

Why the Railroads Killed the Fair Truck Bill: To Keep the Farmer Paying High Fertilizer Rates!

When the Railroads put a paid under cover agent in the Grange office at Harrisburg to kill the Fair Truck Bill, were they trying to help the farmer? When the bill was killed, Truckman Miller wasn't allowed to deliver a full truck load to farmers at his low rate. He surprised the railroads, who thought they had won, by asking ICC to apply his low rates to a partly filled truck. Eastern Railroads intervened and their protest dated last March 24, said, in part:

"If this proposed change of rates is permitted to become effective its use WILL FORCE DOWN THE RATES (for fertilizer shipped by railroads in Pennsylvania)* . . . not only from and to the points here under protest BUT TO AND FROM OTHER POINTS AS WELL.

". . . *and will create unfair and destructive competitive practices* . . ."

In short, the railroads will do ANYTHING to keep up the cost of fertilizer to Pennsylvania farmers.

*Meaning: Increases interest for others.

EXHIBIT D-539a.

Noerr et al v. E. R. P. C. et al.

SUMMARY OF PLAINTIFFS' ANSWERS TO PENNSYLVANIA RAILROAD INTERROGATORY NO. 1(m) RELATING TO OVERWEIGHT AND OTHER VIOLATIONS

Defendant Pennsylvania Railroad served Interrogatories upon 52 plaintiffs. Among such Interrogatories was the following:

"1(m) The times and places since January 1, 1949 that any truck owned or operated by the above named plaintiff was charged by a public official with being operated in violation of the laws of Pennsylvania relating to:

(1) Weight limitations;

(2) Size limitations;

(3) Speed limitations;

(4) Any other limitation or prohibition;

giving the results in each case, the name and office of the official involved and, if a fine was assessed, its amount and whether or not it was paid."

Eleven plaintiffs failed to file Answers to the P.R.R. Interrogatories.(1)

Plaintiff Pennsylvania Motor Truck Association, which operates no motor trucks, did not file an Answer to Interrogatory 1(m). In addition, nine individual trucking firm

(1) The eleven plaintiffs who failed to file Answers to P.R.R. Interrogatories were the following:

Allison Trucking
J. Don Bartlett Trucking Co.
Hennis Freight Lines, Inc.
Hollywood Cartage Company, Inc.
Harry O. Kline Transfer Co.
Jack Landsback Trucking Company
Mooney Bros. Trucking Company
Roberts Freight Lines
Valley Freight Lines, Inc.
Venturella Trucking Company
Warner & Smith Motor Freight, Inc.

plaintiffs filed Answers to Interrogatory 1(m) which were on their face inexact or unresponsive, in most cases for the stated reason that records were not available from which this information could be ascertained.(2)

A total of 31 plaintiffs filed Answers to Interrogatory 1(m) which were both precise and responsive. However, in several individual cases, the Answers filed were not complete for all the years for which information was requested. In the following list, those trucking firms which filed incomplete Answers are designated by asterisks.

The following list consists of the number of violations reported by each plaintiff to have taken place within Pennsylvania subsequent to January 1, 1949. All the listed items represent violations of the Pennsylvania weight laws, except for some 24 miscellaneous violations. In addition to those listed, a relatively insignificant number of other miscellaneous violations was reported.

*Akers Motor Lines, Inc. (1953 only)—8 violations
D. F. Bast—56 violations
A. W. Bauman, Jr. Trucking Company—1 violation
G. C. Braden Trucking Company—2 violations
Cooper-Jarrett, Inc.—509 violations
William F. Crossett, Inc.—29 violations
Davidson Transfer and Storage Company—90 violations
C. W. Dillie—5 violations
Fischbach Trucking Company—31 violations
Fowler & Williams, Inc.—54 violations
*Friedman's Express, Inc. (not including 1949)—30 violations

(2) Following are the nine plaintiffs who failed to file exact or responsive Answers to Interrogatory 1(m):

Chadderton Trucking
Daily Motor Express
Eastern Freight-Ways, Inc.
Lombard Bros., Incorporated
McLean Trucking Company
Martin Brothers
McCullough Transfer Co.
Pennsylvania Transfer Company
York Transportation Co.

Hall's Motor Transit Company—73 violations
Edward G. Horn Trucking Company—8 violations
Karn's Transfer, Inc.—137 violations
Keystone Lawrence Transfer & Storage Company—2 violations
*Kramer Brothers Freight Lines, Inc. (not incl. 1949)—596 violations
Lansdale Transfer Co., Inc.—1 violation
F. W. Lusk Transfer Company—no violations
W. J. McCormick Truck Transportation—no violations
Martsolf Bros.—no violations
Miller Motor Express, Inc.—no violations
*Mushroom Transportation Company (1952 only)—349 violations
Lester C. Newton—4 violations
Noerr Motor Freight, Inc.—16 violations
Rodgers Motor Lines, Inc.—163 violations
Seaboard Tank Lines, Inc.—295 violations
*Spector Motor Service, Inc. (1952 only)—538 violations
Suwak Trucking Company—38 violations
W. I. Womeldorf & Sons Company—6 violations
Yale Transport Corporation—no violations
T. M. Zimmerman Company—17 violations

The grand total of violations reported, with the qualifications set forth above, is 3,058, of which approximately 3,034 were violations of the weight laws.

Only a few of the plaintiffs reported the specific weights for which overweight fines were paid. The largest reported overweight was 29,000 pounds by Mushroom Transportation Company on September 3, 1952. The Company paid a fine of $53.50 for this occurrence.

EXHIBIT D-677.

NOTES FOR DISCUSSION

PUBLIC RELATIONS PROGRAM

21 MAY 1952

(CONFIDENTIAL)

GENERAL CONSIDERATIONS

The enclosed notes represent an outline for a program and the thinking behind it; projects are not developed in detail, nor is the timing nor the priorities final. The program will be developed and continuously adjusted in the light of actual events and experience.

Examination of the record of the previous activities, and discussions with the principals who participated, leads to the conviction that the previous program was well planned and executed and failed only because of the force of an unanticipated attack by the "Concealed Opposition." In consequence, it is believed that the measures necessary to counter the "grass roots" activities of that opposition, much of it of lasting consequence; and particularly the effects of those activities upon the Governor and his subsequent veto of the bill, and the consequent importance of countering these influences upon the Governor personally, far outweigh in present importance the main lines of activities of the previous program.

Determining the actual influences upon the Governor's decision, and countering them; effectively stopping further extension of opposition measures; and eliminating the opposition advantages already gained—these represent major emphasis.

The program here, as it is developed, will encompass four simultaneous lines:

1. The Governor's past, present and future attitude.

2. The aggressive coping with opposition measures past, present and future.

3. The preparation and routing of the bill, itself and support therefore.

4. A constructive program to build sound and lasting public support for the cause.

1. The Governor's Attitude: This is fundamental. If the Governor is willing to give (a) open support or (b) even informal oral support, the basic problem is relatively much simpler than if (c) he will give no indication or (d) will oppose re-passage, or passage of a modified bill to meet specifics in veto message.

If Governor is "neutral", re-passage will be definitely much more difficult than it would be under conditions (a) and (b) above.

ACTION INDICATED:

(1) It is of the utmost importance that we ascertain the *reasons or motives* for the Governor's veto.
At present the evidence leads to a wide range of conjecture. It is possible (a) that he acted out of purely conscientious convictions based upon the preponderance of evidence adduced at the hearing; or (b) that whatever his personal convictions might have been he acted from practical political considerations based on indications of a substantial, organized "grass roots" protest against the bill adduced at the hearing; or (c) that for this same reason Duff urged him, directly or indirectly to veto the bill. (Both (b) and (c) suppose that national convention strategy primarily dictated the move—to conserve internal state powers which might be jeopardized by a strong issue split.)

Without prejudice in advance to the Governor's motives, it would seem prudent to take cognizance of two

unconfirmed rumors which attained considerable currency (d) that a rumor perhaps assiduously spread by the "Concealed Opposition" had it that an attorney of prominence, prior to the veto known to have been personally close to the Governor, received two payments of $50 thousands each for obtaining passage, and was to have received another $50 thousands payment after the Governor signed the bill. It seems to be the fact that these two old friends became bitter enemies immediately after the Governor's veto. (Our friends inform us that the rumor was baseless, but that a member of the same firm did represent the association in connection with the bill, at an indicated total fee of less than one-third that mentioned in the rumors, and that for straightforward representation and not directly or indirectly for "influence"). It will be seen therefore, that we must take into consideration the inference that the Governor might have been primarily activated by the false rumor—either because (d.1) his old friend did not share the profits; or (d.2) more probably that he felt that his signing the bill might have been considered proof of the rumor. Finally, it is a fact that there were repeated and fantastic representations made to our friends that the Governor wanted various sums of money for various purposes as a consideration for signing the bill, and in view of charges which had been made against the Governor's background (involve rackets in his community) these various representations were politely listened to, or not acted upon. Whether or not the Governor personally knew of these representations, it would seem prudent to assume the possibility (e) that the Governor vetoed the bill as the result of the failure of our friends to act on these peculiar suggestions. (Some of the contacts were melodramatic—meetings at night in a dark hall in the Capitol, changing taxis to rendezvous, talking through a high hedge, (etc.). There seems to be no doubt some

But something happened. The Eastern Railroads entered a legal objection to say that if Miller was permitted to charge this low rate to the farmer for a part load of fertilizer THE RAILROADS WOULD HAVE TO LOWER THEIR RATES FOR CARRYING FERTILIZER, NOT ONLY IN THIS AREA, BUT TO AND FROM MANY OTHER POINTS.

The dominating power in Eastern Railroads in the Pennsylvania area is the Pennsylvania Railroad. The Eastern Railroads for this purpose is a lobbying organization, *serving the interests of the Pennsylvania Railroad.*

Now remember how the Pennsylvania Railroad feels about the Pennsylvania farmer: the railroad is scared to death it may have to lower fertilizer rates. This clearly establishes, on the Federal records, its basic feelings.

Now what is the 20,000- pound—16,000-pound business? Pennsylvania has a mixed up hodge-podge of regulations the effect of which is to make it hard to operate motor trucks at a fair profit. Who gains from this hodge-podge? The Pennsylvania Railroad. It can keep up its high freight rates against the Pennsylvania farmer, business man and consumer, *if it can keep the truckmen from operating efficiently.*

It is plain common sense that if it costs the truckman more to operate, the higher cost will be passed on to the user—in the case of fertilizer, the farmer. Likewise, it stands to reason that more efficient laws, permitting less costly truck operation, will tend to save the farmer and other users money, not only in truck charges, but also from the *lower rail freight rates* which would have to follow.

The truckmen developed the "Fair Truck Bill" after long study and consultation. It would permit more efficient and therefore *cheaper* trucking operation in Pennsylvania. It also would help National Defense, increase highway safety, and increase fines for overloading.

The Legislature passed the Fair Truck Bill last year.

This was a terrible blow to the Pennsylvania Railroad—to have the Pennsylvania Legislature, the sovereign power

(Continued on Next Page)

OLD DOC BYOIR "P. M. M."

(Patent Medicine Man)

Carl Byoir, in addition to defeating the public will in legislation was partner in patent medicine operations, to one Julius Tuvin, who agreed to a cease and desist order from the Federal Trade Commission concerning false patent medicine claims.

Selling "Nerve Force" medicine, an elixir for the insides, a tonic to grow hair, and a reducing compound defined as a "humbug" by American Medical Association, taught him how to fool the public. Old Doc Byoir "is no babe in the woods," wrote U. S. Circuit Court of Appeals Judge Minton in affirming Byoir's guilt and a $5,000 Federal fine for conspiring to restrain and monopolize trade.

HOW THE PENNSYLVANIA RAILROAD PREYS ON FARMERS

(Continued from Preceding Page)

of the Commonwealth, pass a law that by making efficient trucking possible, would lower the cost of fertilizer to farmers and thus force the Pennsylvania Railroad to lower the high charges it levies upon the businessmen, consumers and farmers of the State.

(The Pennsylvania Railroad is used to soaking the citizens of Pennsylvania—for it has managed, without specific exemptive laws, to avoid paying taxes in Pennsylvania that it pays in other states.)

What to do? How could the railroad defeat the Legislature's "Fair Truck Law"?

Well, it would be necessary to stir up some outcry from the Grange and from other organizations *supposed to represent the farmer's interest.*

But if the Pennsylvania Railroad got the Grange to help maintain high rates for fertilizer against the farmer, that would be deceiving the Grange, wouldn't it?

Who could they get to deceive the Grange?

Who indeed but Carl Byoir Associates. (Carl Byoir is a real old time patent medicine man.) Your Congressman can tell you about Congressional Investigations of Byoir and his undercover men, involving allegations of the use of prostitutes, huge amounts of liquor, and huger amounts of good hard money. But always the same pattern—hundreds of thousands of dollars used in slush funds to deceive worthy organizations to defeat the public will.

So Pennsylvania Railroad, the dominant interest in Eastern Railroads, had Eastern Railroads hire Byoir.

Byoir carpetbaggers descended upon Harrisburg and moved into the offices of the Grange and other organizations supposed to protect the citizens. They had orders to "kill the Fair Truck Bill at any cost" and plenty of money to do it with. The whole shocking story will come out in due time but just now we are talking only about the Grange.

Remember, the Pennsylvania Railroad wants to charge the farmers of Pennsylvania MORE for fertilizer. Remember that the intent of the Fair Truck Bill was to lower costs to farmers. Remember that the Grange has always been a fine, honorable organization representing the farmer.

Well, C. Colburn Hardy, a paid Byoir agent, and therefore a paid agent of the Pennsylvania Railroad, quietly moved in to the state Grange office at Harrisburg and took over the campaign.

Hardy's brains and the Pennsylvania Railroad's money —just how much of a huge slush fund only a Congressional investigation can find out—and suddenly there were great

(Continued on Next Page)

Exhibit D-61

WILL YOU LET THE PENNSY GET AWAY WITH IT?

FILL IN, TEAR OUT, AND MAIL FOR FURTHER INFORMATION

Name .....

Address .....

Without obligating myself in any way, I will do what I can as a good citizen to see that the Pennsylvania Railroad stops its undercover campaign against a better highway system and better use of existing highways.

Signed .....

Pennsylvania Motor Truck Association, Telegraph Building, Harrisburg, Pa.

OUR MOTTO: BETTER USE OF HIGHWAYS = LOWER SHIPPING COSTS

THIS PAMPHLET PREPARED AND DISTRIBUTED IN THE INTERESTS OF HONEST GOVERNMENT

Exhibit D-61

236b

of the suggestions did emanate from individuals close to the Governor.

(2)—The Governor's motives for the veto and his present attitudes being ascertained, our entire program should be corrected accordingly, viewing this situation as possibly the most important of all problems.

(3)—In any event, a new bill should be drafted which would eliminate by avoidance unnecessary opposition resulting from the specific objections raised by the Governor in his veto message.

2. The "Concealed Opposition". A careful reading of the record of the past campaign, and conversations with the principals who worked with unusual skill and thoroughness and that the program's ultimate defeat by veto arose primarily from vigorous activitles of the "Concealed Opposition". This effect of this campaign may be summarized as follows:

Whether or not it directly caused the Governor to veto the bill, it did beyond question furnish him with the evidence of "grass roots" objection.

This objection in at least three important groups carries over and must be effectively countered to ensure passage, of the desired legislation.

The "Concealed Opposition" may be expected to be continued even more vigorously in the forthcoming period, and to be increasingly effective (since it will begin this time from a well advanced and entrenched position)—unless it is effectively countered.

ACTION INDICATED:

(1) Direct action to counter the "Concealed Opposition". An ideal program would contemplate action which would result in their "surrender" at the earliest possible time, without publicity; or, that failing, public

attack from two different directions only in a second period: or, that also failing to end the activities complained of, full public attack of a continuing nature in the third period. It goes without saying that a simple promise to stop similar activities in the future should be considered insufficient; it should be accompanied by definite and controlled assistance in undoing past harmful activities and any commitments as to our future abstention from publicizing these conspiratorial activities should be contingent on execution of their promises.

WARNING: Our friends in the past have stressed the concealed and subversive manner of these activities of the "Concealed Opposition"; therefore, since we may have to "come into court with clean hands" we should avoid duplicating their activities. We should not establish any "phoney" organizations, because if we do, we negate our past and future arguments criticizing them on that basis. All attacks should come from named individuals or groups whose bona fides cannot be questioned. Likewise, we must beware of falling into a deliberate trap by being exceedingly careful of all factual material used. Finally, we should take no action which to an unbiased citizen would not instantly be a simple act of defense by honest men against dishonest acts of an underhanded nature. The possible minor gains from activities of questionable nature would seem to be far outweighed by the danger to the whole program inherent under the circumstances if at any time we placed ourselves or our clients in a vulnerable position.

(2) Indirect action and direct action to counter the misuse of the enormous grass roots potential of the 4,000 township highway supervisors, whose leader aroused them against the bill for unknown motives. There can be no doubt of the influence and prestige of this leader-

ship, not the importance of the group. Two lines are indicated (a) one of personal contact with the leadership; and (b) the direct contact with individual members (a costly job) via pamphlet showing how truck fees help them and their roads directly. (This does not appear to be enough, and other lines of possible action should be devised here.)

(3) Indirect and direct action to counter the extensive activities of the "Concealed Opposition" with the Grange. The indirect activity should concern itself primarily with the leadership, both to ascertain the strength of its involvement with the opposition, and also to persuade them to cooperate. Direct action suggested:

(1) A pamphlet for mailing to individual farmers based on the PRR intervention against the farm interest in the fertilizer case. This is a classic exposition of the real interest of the "Concealed Opposition"—to make the farmer pay more for his fertilizer; something any farmer should remember all his life.

(2) A prize essay contest for 4-Hers, thru high schools, on "what the motor truck industry does for today's farmers in Pennsylvania." The advantage of this is that every contest will receive extensive help from his parents who will help him digest the background material.

(4) Indirect and direct action to counter the effective use by the "Concealed Opposition" of the Keystone and AAA motor clubs in the state. Indirect action to ascertain and deal with the reasons for the leadership's permitting the use of these organizations to do the opposition's dirty work. Direct action as follows:

In each of the two organizations (Keystone Motor is a big one outside AAA) a contest to select Out-

standing Safe Truck Driver of the Month—for an outstanding act of heroism, ingenuity, or courtesy furthering highway safety (an extension of clients' present activity in this direction). Winning driver gets a big enough prize to make all truck drivers try to be popular. Motorist club member who nominates winning driver gets a free set of new tires (enough to make most motorists willing to try). Motorist club member must read literature to qualify. We borrow motor club's mailing list for direct mailing—open only to members.

We help to organize a *legitimate* and *permanent* organization, the Motorists Safety League, which has the basic function of arranging continuous liaison between truck operators and *private car owners*, primarily through clubs and associations but also with individuals of both groups (including farmers):

In order to get better highways

For safer and more comfortable use of highways for all

And to oppose vigorously open or concealed enemies of better highways and better highway transportation

This organization will do the polite education and the heavy slugging against lying opposition (if necessary) among farmer truck owners, and private motorists, as well as among non-members of PMTA. Qualified farm and private motorists are entitled to emergency help from truck drivers.

3. The Joint State Government Commission: This is another consequence of the Governor's veto. He, in effect, has asked this Commission for a general recommendation.

ACTION INDICATED:

Appointment as quickly as possible, possibly by the proposed Motorist Safety League, of an impressive Committee to make a suitable report, and the presentation of this report and accompanying brief to the Commission for its guidance.

WARNING: An adverse or inadequate report might be very harmful to the program; default might permit the opposition to "write" the report. On the other hand, our record in this connection should be open and aboveboard.

4. A revised text of the bill. This would appear to be an urgent necessity; high in priority. Our clients know the internal and external compromises that were necessary. The language of the Governor's veto message contains what would seem to be unmistakable obstacles to be overcome, perhaps by simple wording rather than by substantive change. (For example, TR has suggestion of basing a simple formula on limits for front, single, and tandem axles, which can be added up by any user just so they stay within total limits for types—such a formula, if internally acceptable, would have the advantage of escaping a double talk type of criticism indicated in the veto message). It is important to fix a popular title such as "Fair Truck Bill", before opposition can revive "Big Truck Bill". It is suggested the bill have definite values for (a) farm truck owners and (b) private motorists, if possible.

5. The Legislature: Obviously last year's methods worked. This year, however, there are some added difficulties, including principally present interest in the national campaign, some doubt caused by the "Concealed Opposition's" effective campaigns amongst Highway Supervisors, Grange, and the two Motor Clubs, and the lasting and perhaps swelling "grass roots" reaction; and, finally the Governor's opposition. Some of the legislators, perhaps a sufficient num-

ber to prevent passage, would be reluctant to try it again without specific assurance form the Governor. If that assurance is not forthcoming, much more detailed contact work with individual legislators, and much greater "grass roots" work will be required.

ACTION INDICATED: Informative mailings, and perhaps some aggressive mailings containing disclosures on the opposition activities, *should circumstances indicate the desirability,* up to 1 August. After 1 August, letter pollings, personal contacts and indicated local and statewide assistance. After openings of session, continuous contacts of individual members and Committees as indicated, together with supporting publicity as indicated through all three phases.

6. An organized newspaper, wire and feature service, magazine and organizational bulletin publicity campaign, with collateral radio and television programs. This would be supplemented by specific statements and "leaks" as desired to assist individual legislators working on the bill.

7. A sponsored series of local programs to lay the foundations for local business and organizational support as might be required during session.

8. An explorations of possible union cooperations and utilization thereof.

This involves primarily:

1. Utilization of AFL Teamsters support through their media channels, and active community support by drivers, locals, etc.

2. A neutralization, if possible, of strong CIO opposition.

3. A neutralization, if possible, of UMW opposition.

9. Liaison and use of all other appropriate agencies—such as oil companies and manufacturing companies, chambers of commerce, etc.

TENTATIVE TIME TABLE OF OPERATIONS

PRESENT TO AUGUST FIRST:

1. Try to ascertain Governor's veto motives and present attitude. Adjust program in light of findings.

2. Launch complete investigation of "Concealed Opposition", obtaining evidence of past year's subversive activities. In form which can be published without libel danger is possible. Concentrate on real estate holdings (valuations) and real taxes paid by one railroad in Pennsylvania as example. Information should be gathered in form usable later in court if necessary.

3. Prepare immediate four-page mailer pamphlet (with cartoon) primarily for state farmers, also for legislators, high-lighting the fertilizer case. *Why* the Railroads Used the Grange: To Increase the Price the Farmer Pays for Fertilizer. But *why* did the Grange permit itself to help the railroads gouge the farmer! (This has the beauty of being in terms clear and unforgettable for any farmer.)

4. Immediate work on the selection of an advisory committee to work on Commission advisory report. (Should the advisory committee be retained by PMTA or by Penna. Motorists Safety League.)

5. Immediate shaping up and launching of the 4-H club essay contest.

6. Immediate shaping up and launching of the dual (one for each Motor Club) Outstanding Safe Truck Driver of the Month plans.

7. Immediate launching of informal contest activities in re Grange and the two Motor Clubs.

8. Further discussion over possible means of reaching and educating the 4,000 township highway supervisors as to the duplicity practised upon them.

9. Revision of the bill draft to conform with Governor's objections if possible (at least semantically) and to include features attractive to farm truck owners and to private motorists, if possible.

10. Immediate organization of the Motorists Safety League with private motorists, farm truck owners, traveling salesmen, as well as truck operators eligible. Any farmer who is a member of the Grange, (or PMTA) or any member of either Motor Club, who qualifies (by reading the literature and signing a pledge to cooperate for highway comfort and safety, can carry a card and display an emblem entitling him to emergency courtesies from truckers, including a night signal.

11. Special attention immediately to Maryland Highway Test as a continuing publicity and technical problem which should be constructively dealt with, rather than defensively.

12. Initial informative mailing to legislative candidates. Possible aggressive mailings—such as the fertilizer pamphlet. Continuation of personal contacts.

13. Establishment and beginning of statewide press activity; constructively informative during this period, with possibly some aggressive blows, such as fertilizer story.

14. Immediate canvassing of statewide radio and television possibilities for later use.

15. Initial exploration of other media—national magazines, house organs, advertisements, organizational publications, etc., primarily for Fall publications.

16. Planning of community activities for the two later periods.

17. Initial exploration of union contacts and activities.

18. Initial exploration of corporation and organizational support possible for later use.

19. Planning and launching program for 90-day test certificates for truck-weighing scales.

20. Civilian defense demonstrations as part of constructive program to increase esteem of truckmen.

AUGUST FIRST TO OPENING OF LEGISLATURE:

21. Stepping up of investigation of "Concealed Opposition". Possible launching of tax-payers' suit and other activities.

22. Actual beginning of 2 Motor clubs, Grange and 4H activities; also Township Supervisors, (if plan approved).

23. Specific contacts with legislators on help, etc. canvassing activities, informative mailings; the dope on the "Concealed Opposition" (if necessary).

24. Publicizing of revised bill, its advantages to specific groups in the State. Strong activities by Penna. Motorists Safety League.

25. Final estimate of Governor's attitude, and according revision of legislative program. Publicity in and out of legislature relative to Governor's promise to approve if re-passed.

OPENING OF LEGISLATURE ON:

26. Effort to obtain early passage in case re-passage over the veto is required.

27. Full publicity campaign supporting the bill. (Including the key organizations—2 motor clubs, Grange and highway Township supervisors).

28. If necessary, full and aggressive publicity regarding "Concealed Opposition", including tax-payers suits, hearings . . . , possibly U S Congressional investigation.

29. Maximum timed use of supporting groups, organizations, unions, community activities, etc.

30. If possible, obtain pledge from Governor in re his action after passage of legislation, and publicize it.

AFTER PASSAGE:

31. Follow through with Governor by personal contacts.

32. Support legislation by publicity program.

33. Be prepared for "heavy artillery" activity if "Concealed Opposition" tries to repeat performance of phoney and staged agitation against bill.

The above is not intended to be a complete program, but a tentative timetable for oral discussion among principals, to be corrected, augmented, or altered on the basis of the conversation. Many obvious lines of activity suggested either by the record or by conversations with principals have not been mentioned.

ALLOCATION OF THE FEES OF ALLIED PUBLIC RELATI

DESCRIPTION	MAY TO DECEMBER 1952	JANUARY TO JUNE 1953	JULY TO DECEMBER 1953	JANUARY TO JUNE 1954	I
Allied Fee	24,000.00	18,000.00	18,000.00	18,000.00	
Allied Disbursements	43,504.92	95,842.95	47,421.75	12,251.23	
Allied Total Fee and Disbursements	67,504.92	113,842.95	65,421.75	30,251.23	
(1) Investigating the activities of the defendants in order to prepare and execute Allied's public relations program for PMTA.	10,000.00	1,500.00			
(2) Preparing and distributing the Grange pamphlet (D-61) and attempting to counteract the position of the Pennsylvania Stage Grange, under the leadership of Messrs. Mahood and Dimit, with reference to truck weights and taxes culminating in the activities of Deitrick at the Grange convention held in October 1952, including the ensuing publicity concerning the so-called "Grange split."	7,500.00				
(3) Preparing and distributing the tax manual (D-641) and the tax manual law supplement (D-655), visiting Pennsylvania officials to stimulate assessment and taxation of railroad property, promoting taxpayers' suits to compel assessment of railroad property, organizing a field force of local truckers and industries to advocate the taxation of railroad property at the local level, and obtaining support for trucker-sponsored legislation for taxation of railroads in the 1953 session of the General Assembly	7,500.00	15,000.00			

AND DISBURSEMENTS
ONS ASSOCIATES, INC.

JULY TO ECEMBER 1954	JANUARY TO JUNE 1955	JULY TO DECEMBER 1955	JANUARY TO JUNE 1956	JULY TO DECEMBER 1956	JANUARY TO JUNE 1957	JULY TO AUGUST 1957	TOTAL
18,000.00	18,000.00	14,333.32	12,499.98	12,499.98	12,499.98	4,166.66	169,999.92
12,675.07	12,239.15	3,119.84	767.20	5,822.43	1,343.16	—	234,987.70
30,675.07	30,239.15	17,453.16	13,267.18	18,322.41	13,843.14	4,166.66	404,987.62
							11,500.00
							7,500.00
							22,500.00
							2,500.00
							7,250.00
5,000.00							15,650.00
							5,000.00
	1,500.00	5,000.00	7,000.00	2,500.00			47,000.00

DESCRIPTION	MAY TO DECEMBER 1952	JANUARY TO JUNE 1953	JULY TO DECEMBER 1953	JANUARY TO JUNE 1954	JULY TO DECEMBER 1954	JANUARY TO JUNE 1955	JULY TO DECEMBER 1955	JANUARY TO JUNE 1956	JULY TO DECEMBER 1956	JANUARY TO JUNE 1957	JULY TO AUGUST 1957	TOTAL
(9) Visiting newspapers, radio and television stations in Pennsylvania.	1,500.00	9,000.00	?,000.00									12,500.00
(10) Contacts with national magazines, newspapers, etc.	2,000.00	2,000.00			500.00	500.00		500.00				5,000.00
(11) Preparing advertising concerning railroad activities.		900.00										900.00
(12) Meetings with railroad and motor carrier executives to explore areas of common interest and cooperation between the railroad and trucking industries and negotiations looking to settlement of this lawsuit.					5,000.00	5,000.00	5,000.00	2,500.00	4,750.00			22,250.00
(13) Political research and maintaining contacts with and assisting PMTA members, truck suppliers, and shippers to maintain contacts with Governor Fine and members of the Pennsylvania General Assembly in the 1953 and 1955 sessions and with the executive and legislative branches of the federal government.	3,000.00	6,500.00				4,000.00						13,500.00
(14) Promoting good will for the trucking industry through activities such as: PMTA safety program; the story of the woman truck driver (Myrtle Still); the getting-out-the-vote campaign; the Pennsylvania state farm show; the polio truck pool; the Christmas truck pool; distribution of the motion picture film "Knights of the Highway"; expansion of the PMTA speakers' bureau; contacts with civic and service organizations; participation in "Pennsylvania Week" observance; and cooperation in civil defense program	3,000.00	3,000.00	5,000.00	2,500.00	2,500.00	2,500.00						18,500.00

DEFENDANTS' REQUESTED FINDINGS OF FACT—PLAINTIFFS' CASE.*

I. PARTIES AND JURISDICTION.

1. The plaintiffs are: Noerr Motor Freight, Inc.; Kramer Bros. Freight Lines, Inc.; McLean Trucking Company; Lansdale Transportation Company; T. M. Zimmerman Co.; Darl D. Womeldorf, an individual t/a W. J. Womeldorf & Sons Co.; Rodgers Motor Lines, Inc.; Akers Motor Lines, Inc.; Keystone Lawrence Transfer & Storage Co.; W. J. McCormick, an individual t/a W. J. McCormick Truck Transportation; Thomas W. Martin & W. Thayer Martin, partners t/a Martin Brothers; Julius Gardocky, an individual t/a Pennsylvania Transfer Company; Floyd W. Lusk, an individual t/a F. W. Lusk Transfer Company; The Davidson Transfer and Storage Company; Suwak Trucking Company; C. W. Dillie, an individual; A. W. Bauman, Jr., an individual t/a A. W. Bauman, Jr. Trucking Company; A. K. Martsolf, Clyde E. Martsolf, C. Harold Martsolf and Lester H. Martsolf, partners t/a Martsolf Bros.; Spector Motor Service, Inc.; G. C. Braden, an individual t/a G. C. Braden Trucking Company; Edward G. Horn, an individual t/a Edward G. Horn Trucking; Seaboard Tank Lines, Inc.; Friedman's Express, Inc.; Karn's Transfer, Inc.; Lombard Bros. Inc.; Lester C. Newton Trucking Company; Neil J. Bast and Karl Bast, partners t/a D. F. Bast; E. W. Chadderton, an individual t/a Ed Chadderton Trucking; Cooper Jarrett, Inc.; Eastern Freight-Ways, Inc.; Fowler & Williams, Inc.; William F. Crossett, Inc.; Fischbach Trucking Co.; Hall's Motor

* The rulings of the court below on defendants' requests are indicated at the end of each request. Where the court below struck words from the defendants' request, those words have a line drawn through them. Where the court below added words to the defendants' request, those words have been underlined.

Transit Company; Mushroom Transportation Company, Inc.; Miller Motor Express, Inc.; Yale Transport Corporation (Yale Rental Corporation); Daily Motor Express, Inc.; McCullough Transfer Co.; York Transportation Company, Inc.; and Pennsylvania Motor Truck Association (PMTA). Each plaintiff is a corporation, except where it is indicated that a plaintiff is an individual or a partnership. (Plaintiffs' Answers to Interrogatories filed on 2/17/53 by Pennsylvania Railroad) [*Affirmed*]

2. Plaintiffs, other than PMTA, operate trucks in Pennsylvania and in other states within the eastern part of the United States, and are engaged in the long-distance hauling of freight in interstate commerce in competition with railroad defendants. (Counterclaim, paragraph 3, at 60, 3952) [*Affirmed*]

3. Plaintiff PMTA is a Pennsylvania corporation, whose membership includes, among others, most of the plaintiffs. (Counterclaim, paragraph 4, at 60, 3952) [*Affirmed*]

4. The railroad defendants are: The Baltimore & Ohio Railroad Company; Boston & Maine Railroad; Canadian National Railway Company; Canadian Pacific Railway Company; The Central Railroad Company of New Jersey; Central Railroad Company of Pennsylvania; The Chesapeake and Ohio Railway Company; Delaware & Hudson Railroad Corporation; The Delaware, Lackawanna & Western Railroad Company; Erie Railroad Company; The Lehigh and Hudson River Railway Company; Lehigh & New England Railroad Company; Lehigh Valley Railroad Company; Maine Central Railroad Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; New York, New Haven & Hartford Railroad Company; New York, Ontario & Western Railway; Norfolk & Western Railway Company; The Pennsylvania Railroad Company; Pittsburgh & West

DESCRIPTION	MAY TO DECEMBER 1952	JANUARY TO JUNE 1953	JULY TO DECEMBER 1953	JANUARY TO JUNE 1954	JULY TO DECEMBER 1954
(19) Counsel fees (Dawson, DeVarco, Hirsh).	450.00	278.00	2,500.00		
(20) Preparation of photostats for use of sel, interviewing witnesses, and conferring trial counsel.	2,500.00	8,000.00			
(21) Management and planning functions not cated to any particular category, including ding by to defend against possible renewed road activity.	7,404.92	4,664.95	39,921.75	21,251.23	14,175.07
TOTAL	67,504.92	113,842.95	65,421.75	30,251.23	30,675.07

JULY TO DECEMBER 1954	JANUARY TO JUNE 1955	JULY TO DECEMBER 1955	JANUARY TO JUNE 1956	JULY. TO DECEMBER 1956	JANUARY TO JUNE 1957	JULY TO AUGUST 1957	TOTAL
				3,000.00			6,228.00
		500.00	2,500.00	2,250.00			15,750.00
14,175.07	10,239.15	3,453.16	767.18	72.41	9,843.14	4,166.66	120,959.62
30,675.07	30,239.15	17,453.16	13,267.18	18,322.41	13,843.14	4,166.66	404,987.62

(4) Preparations for a nuisance pamphlet and program attempting to dramatize alleged deficiencies in railroad operation such as train wrecks, stream pollution, diseases spread by faulty sanitation equipment, etc.	1,500.00	1,000.00			
(5) Urging and preparing for an investigation of the U. S. Bureau of Public Roads by the Senate Appropriations Committee in connection with the Maryland Road Test.	2,250.00	5,000.00			
(6) Attempting to persuade Pennsylvania Labor leaders to support truck weight bills in the 1953 and 1955 sessions of the General Assembly, contacts with Teamster leaders, and attempts to enlist the support of the International Teamsters Union for the Allied program. NOTES: *This represents the Charnay-Bildersee trip to the International Teamsters Convention at Los Angeles, Cal. in October 1952. **This includes $3,000 for the Charnay-Paynter trips to Miami in January - March, 1953.	2,650.00*	8,000.00**			
(7) Visiting farm leaders in preparation for PMTA-sponsored legislation introduced during the 1955 session of the General Assembly.					5,00
(8) Attendance of Allied representatives at depositions, pretrial hearings, and the trial and preparing or distributing press releases and other publicity material such as the Green affidavit (D-585).		22,500.00	8,000.00	500.00	

(15) Organizing and promoting the Pennsylvania Motor Safety League and its successor, the Citizens' Committee for Highway Safety.	3,000.00	6,500.00	500.00					10,000.00
(16) Meetings (other than PMTA's regular meetings) with truck operators, manufacturers and suppliers of the trucking industry at which Allied reported on its activities and the progress of this lawsuit and solicited funds and support for its program. NOTE: This includes $12,000 for the Charnay-Peynter trips to Miami in January - March, 1953.	10,000.00	16,000.00	3,000.00	2,500.00				31,500.00
(17) Attending regular meetings of PMTA, its chapters, and its members.	1,750.00	2,500.00	3,000.00	3,500.00	3,500.00	3,500.00	1,500.00	2,500.00	1,250.00	1,500.00		24,500.00
(18) Assisting PMTA in obtaining financial support and cooperation from ATA.	1,500.00	1,500.00	1,500.00					4,500.00

Virginia Railway; The Reading Company; Western Maryland Railway; and Union Railroad Company.

The individual defendants are: Walter S. Franklin, a former president of The Pennsylvania Railroad Company; M. W. Clement, a former president of The Pennsylvania Railroad Company; R. W. Brown, a former president of The Reading Company; Joseph A. Fisher, president of The Reading Company; Charles J. Graham, president of Pittsburgh & West Virginia Railway; and Fred W. Okie, president of Union Railroad Company.

The other defendants are: Eastern Railroad Presidents Conference, and Carl Byoir & Associates, Inc. [*Affirmed*]

5. Railroad defendants operate in the area generally east of the Mississippi and north of the Potomac Rivers (hereafter called "Eastern Territory"), and are engaged in the transportation of passengers and the hauling of freight in interstate commerce. (Counterclaim, paragraph 1, at 59, 3951) [*Affirmed*]

6. Defendant ERPC is an unincorporated association having offices at 143 Liberty Street, New York, New York. Its membership consists in the main of the presidents or trustees of defendant railroads. (Counterclaim, paragraph 2, at 60, 3952) [*Affirmed*]

7. Defendant Carl Byoir & Associates, Inc., is a New York corporation, engaged in the business of public relations counsel with its principal office at 10 East 40th Street, New York, New York. (Complaint, paragraph 10, at 64) [*Affirmed*]

II. THE CLIMATE OF COMPETITION—DEFENDANTS' LOSS OF BUSINESS TO PLAINTIFFS, THE HIGHWAY PROBLEMS, AND THE OBJECTIVES OF DEFENDANTS' PUBLIC RELATIONS PROGRAM.

8. In the United States as a whole, rail freight traffic in ton-miles for the year 1949 was 89% of rail freight traffic

in 1946; whereas truck traffic in 1949 was 154% of truck traffic in 1946. (D-199) [*Affirmed*]

9. In Eastern Territory, during the post-war period 1946-1949, the freight traffic of Class 1 railroads in revenue ton-miles declined 18% while that of Class 1 motor carriers increased 72%. (D-202, Behling 3983) The freight revenues of Class 1 railroads in this territory increased only 17% during this inflationary period, as compared to a 113% increase for Class 1 motor carriers. (D-203, Behling 3984) [*Affirmed*]

10. In the United States as a whole, in 1928, the railroads transported, in tons, 46.75% of the national production. In 1946, that proportion had declined to 38.36%, and by 1952, it had further declined to 31.37%. The relative loss of traffic by the railroads was greater in the six-year period, 1946 to 1952, than in the 18-year period, 1928 to 1946. Between 1947 and 1949, the annual decline was more severe than that found in any pre-war year. The reduction in the percentage of national production carried by rail was accounted for largely by diversion to other means of transport. Much of the diversion was to motor carriers, although other forms of transportation which compete with railroads had also increased their business. (D-205, Behling, 3992-4000, 4023-4025) [*Affirmed*]

11. Examples of traffic which was diverted from Eastern Territory railroads to motor carriers during the 1946 to 1949 period were candy, alcoholic beverages, canned goods, iron and steel articles, soda products, soap and cleaning compounds, malt liquors, glass containers, fertilizer materials, brass, bronze and copper articles, aluminum articles and window glass. (McMichael, 4081-4090; decisions cited in "Memorandum of Decisions of the Interstate Commerce Commission, etc." filed 1/22/57 at 5709-5714) [*Affirmed*]

12. The presidents of the eastern railroads recognized and were concerned about the decline in the railroads' share of the nation's transportation business in the period from 1946 to 1949 which they reasonably believed was resulting from the diversion of railroad traffic to other forms of transportation. (White, 842, 849; see evidence supporting counterclaimants' requests 9c to 23c) [*Affirmed*]

13. The railroads believed that traffic formerly carried by railroads was being carried by other forms of transportation because part of their costs were being paid by the motoring and general taxpaying public. In the railroads' opinion, barges, airlines, and heavy truck operators did not pay their proper share of the cost of constructing and operating the public facilities they used, such as waterways, airports, and highways. (P-199, p. 1; P-5, p. 3; P-24, p. 2; P-59, p. 2; Mackie, 1438-1439; White, 895-898, 933) [*Denied*]

14. The railroads have publicly stated since 1945 their belief that if each form of transportation paid all of its own costs there would be an economic distribution of traffic, and whichever form could do the best job at the lowest cost would move the freight. Sometimes the railroads would get the traffic; sometimes it would go to other forms of transportation. (White, 909; Mackie, 1440, 1438; P-250, Littlefield, 2110-2111) Since at least 1945, railroads have repeatedly and publicly stated their opposition to use of public facilities at less than cost by any form of transportation. (D-13, D-14, D-21 to D-23; Mackie, 1608-1622) [*Refused as stated*]

15. The railroads believed that an unfair competitive situation resulted from cost advantages enjoyed by other forms of transportation through use of facilities provided to them at public expense. This situation was created by the legislatures. The railroads themselves were powerless to correct it. Only the legislatures could remedy it, if they

chose to. The program of ERPC's Competitive Transportation Committee was aimed solely at supporting legislation to rectify what it believed to be unsound and unfair competitive conditions. (White, 907-909, 915-917; Mackie, 1439, 1645-1646; Swinehart, 107-108) [*Denied*]

16. The railroads believed that the most serious diversion of their business was to large trucks which, they believed, were not making payments adequate to cover their fair share of the cost of constructing and maintaining the highways on which they operated. Accordingly, ERPC's program was directed, primarily, at the competitive advantage which the railroads believed was being unfairly enjoyed by large trucks. By 1949, this highway issue had become a topical matter of growing public concern. (White 842-844, 849-851, 894-900; Degan, 1820-1821) [*Denied*]

17. The railroads had a substantial basis for their belief that the operators of heavy trucks were not paying, for their use of the highways, amounts commensurate with the highway maintenance cost incurred because of highway damage occasioned by large and overweight trucks and construction costs required to build highways capable of carrying heavy trucks. Numerous government-sponsored studies had arrived at this conclusion. (Littlefield, 2047-2050, 2122-2123, 2042-2046, 2081-2086, 2056-2057; Mackie, 1625-1626; D-29 to D-37; D-10; D-3; D-14; P-21, Swinehart, 232-251; see the Court's comment at 3385) [*Refused as stated*]

18. The railroads believed that for many years the trucking industry had engaged on a national basis in an organized campaign for higher truck weight limits and against higher truck taxes, the effect of which was to increase their cost advantage of operating on public rights-of-way. The railroads observed that between 1933 and 1950 the operators of heavy trucks had been successful in obtaining many liberalized size and weight laws, without substantial increases in license fees or truck taxes. (P-136, Franklin, 995, 996) [*Refused as stated*]

19. The railroads sought legislation to establish fair competitive conditions and did not intend to eliminate the trucking industry or any other industry as a competitor. (White, 900, 908-909, 929-933; Mackie, 1441-1442; Deegan, 1820, 1840) With respect to trucks, the railroads supported legislation to tax trucks in proportion to their use of highways, and opposed legislation that would increase the weight limits of trucks, since the railroads believed that the motorist and tax-paying public were paying more for the construction and maintenance of highways for heavy trucks than was necessary to meet the use and needs of the private motorist. (P-199, pp. 1, 4; Deegan, 1694-1695; White, 898-900, 908-909; Swinehart, 133, 154-155, 157-157a; P-5; P-24; P-136, Franklin, 995) [*Denied*]

20. The crystallization and mobilization of public opinion in support of such legislation was the object of defendants' extensive public information program. (White, 894-895, 915-917, 840; Deegan, 1671, 1678-1679, 1734, 1819-1820, 1840) [*Denied*]

21. Because the railroads' public relations personnel did not have the time that such a program required (Deegan, 1672; White, 845), they interviewed and considered proposals from several outstanding public relations firms (Deegan, 1698-1700, 1670-1689). [*Denied*]

22. Proposals were obtained from Byoir (P-3) and several other leading public relations firms (P-198, Deegan, 1784-1785; D-24, Deegan, 1805-1806; D-25, Deegan, 1806; D-26; White, 845). Byoir was retained as public relations counsel to put the projected railroad campaign into effect. (61-62; P-4) [*Affirmed as modified*]

23. Byoir was expected to accelerate the then-increasing public protest against the damage to highways caused by heavy trucks and against the inadequacy of the trucking industry's payments for their use of the highways (Girdler, 425; Swinehart, 158-161, 168-169, 173-179; White, 843, 911-

912; Littlefield, 2085-2086; Deegan, 1697a, 1734; see D-222) *[Denied]*

24. Byoir was expected to arouse the self-interest of the average citizen and interested groups, such as motorists' and taxpayers' organizations, by publicizing what the increased cost of the construction and maintenance of highways for heavy trucks means to the public and by distributing pertinent, authoritative, and factual data on the same subjects then being issued by state highway officials and people engaged in studies of the transportation problem. (Girdler, 420-421, 426-427; White, 898, 900-902, 904-908; P-199, pp. 3-4; P 59, p. 2, Hardy, 762) *[Denied]*

III. THE THIRD-PARTY TECHNIQUE—DEFENDANTS' ENLISTMENT OF ALLIES.

25. For many accounts a public relations firm tries to get before the public as often as possible a favorable report; by name, of its client or its client's product, in order to gain wider public acceptance of the client or its product. For the ERPC account, however, Byoir was to distribute to the public information about the highway construction and maintenance required by big trucks and their payments for the use of those highways. (P-24, pp. 1-6) Public interest in the highway problem, not a product, was to be promoted. (Swinehart, 191, 230-231) *[Denied]*

26. Byoir had not been employed to stir up a truck-rail fight but to arouse the public's interest (Mackie, 1538; Girdler, 440-441; P-199, Deegan, 1691-1692) This could be done more effectively and greater acceptance of the ideas in which defendants believed could be achieved through non-attribution and the third-party technique. (Deegan, 1729). If publicity concerning the highway problem appeared to be only a part of a truck-rail fight, it would not have been newsworthy and the facts and arguments advanced would not have been evaluated on their merits. (Swinehart, 232;

Hardy, 757; Mackie, 1537-1538) In addition, broad press coverage at the local level could be accomplished only by encouraging individuals and groups in their own localities to express themselves on the subject. (Hardy, 756) [*Denied*]

27. Non-attribution and the third-party technique are not peculiar to Byoir and the railroads. They are techniques recognized by and customarily used in the public relations business and were recommended to the railroads by other well-known public relations firms. (Deegan, 1801-1802; P-198; D-25) The identical techniques were used by PMTA and its public relations agents to promote public and legislative acceptance of the trucking industry viewpoint, before, during, and after Byoir's activities in Pennsylvania. (See evidence supporting counterclaimants' requests 43c, 78c-162c) [*Refused as stated*]

28. The persons or organizations that Byoir assisted and to whom Byoir supplied information knew the identity of the persons with whom they dealt and the railroads' connection with them. (Swinehart, 177, 203-204; see evidence supporting defendants' request 43, below) There is no evidence that any person or organization ever subscribed to or expressed a view on any subject in which Byoir was interested that he or it did not actually hold. [*Denied*]

IV. THE CLIMATE OF COMPETITION IN PENNSYLVANIA — PLAINTIFFS' LEGISLATIVE CAMPAIGN.

29. Commencing at least in 1941, PMTA embarked upon a continuing legislative program to increase the loads which trucks could carry legally in Pennsylvania. In each session from 1941 to 1955, it caused bills to be prepared and to be introduced in the Pennsylvania legislature which were intended to increase the permissible weight limits of trucks. Its bills were enacted in 1943, 1945 and 1955. Its 1941 and

1951 bills, which passed the legislature, were vetoed. (HB 690 of 1941, D-346; HB 634 of 1943, D-348; HB 614 of 1945, D-349; HB 1020 of 1947, D-351; HB 560 of 1949, D-352; SB 615 of 1951, D-353; HB 1390 of 1953, D-354; HB 1288 of 1955, D-356; Gogolin, 4505-4534; 5804) [*Affirmed*]

30. All of PMTA's truck weight bills were designed to improve the competitive position of the truckers (Gogolin, 4507, 4511-4512, 4519-4520), to enable the truckers to compete with the railroads ~~in the matter of rates,~~ and to take business away from the railroads (Noerr, 5463-5472). [*Affirmed as modified*]

31. In pursuing its legislative program PMTA, or its officers, prior to Byoir's activity in Pennsylvania, had encouraged its members to take an active part in party politics to aid in obtaining or defeating legislation (D-283 at 4354); had arranged a trucking industry contribution of $76,000, divided equally between the two parties (see evidence supporting counterclaimants' requests 36c-37c); had maintained special committees to establish contacts with Pennsylvania legislators at the county level and to urge support for PMTA's legislative program (Gormley, 4538-4542); and had maintained "live and continuous contact with legislators, candidates and State officials" (D-293 at 4370; D-295 at 4372; D-296 at 4373; D-297 at 4373). [*Affirmed*]

32. Prior to Byoir's activity in Pennsylvania, PMTA had maintained a public relations department or independent public relations counsel to assist in achieving its legislative goals. (Lebow, 4130, 4131; D-209 at 4099; D-210 at 4101; D-213 at 4112; D-214 at 4122; D-215 at 4123; D-219 at 4172; D-221 at 4176; D-260 at 4209; D-230 at 4238) PMTA has sought to achieve it legislative objectives by fighting its battle "on the public relations front". (D-549 at 5326) [*Affirmed*]

33. Defendants' activities in Pennsylvania in 1951 and 1953 were directed solely at resisting PMTA's efforts to

obtain passage of truck-weight bills which would have enabled the truckers to take further business away from the railroads. (See evidence supporting defendants' requests 34, 35, 74) [*Denied*]

V. OPPOSITION TO PLAINTIFFS' 1951 LEGISLATIVE CAMPAIGN IN PENNSYLVANIA.

34. From immediately after PMTA caused the introduction of SB 615, it disseminated inaccurate and misleading publicity about it. Typical was its advertisement entitled "Six Big Reasons Why Senate Bill 615 Should Be Enacted", which was published in all the newspapers throughout the state and sent to every member of the House and Senate. (D-50; Reiter, 2292, 2259-2260) The inaccurate and misleading statements and implications related to increased axle loads (compare D-50 with D-111, p. 1, paragraph 1, at [illegible]04, and Buckius, 3850-3856, 3858); the adequacy of the fines (compare D-50 with P-282, p. 2 and Reiter, 2284, 2289-2291, 2293), the truck braking and engine requirements (compare D-50 with Reiter, 2293-2294), and the increase in truck license fees (compare D-50 with Reiter, 2283-2284, 2294-2295). [*Denied*]

35. Some of the opponents of the bill met to decide what should be done. Present were Joab K. Mahood, who was Executive Secretary of the Pennsylvania State Grange, H. A. Thomson, who was Secretary of the Pennsylvania State Association of Township Supervisors, Edward K. Hibshman, who was legislative representative of the Pennsylvania State Association of Boroughs, Young, who was a representative of the Pennsylvania Motor Federation (AAA), William A. Reiter, who was Chairman of the Associated Railroads of Pennsylvania, Harry Boyer, who was Chairman of the Pennsylvania CIO Council, and a representative of the League of Cities. (Reiter, 2298; Hibshman, 3021; Mahood, 2983; Thomson, 2911) There was discussion of how to oppose the bill. It was decided, among other

things, to get trained publicity personnel ~~who would be able to counteract PMTA publicity.~~ to assist that group in carrying out defendants' program already in operation. (Mahood, 2984, 2983; Reiter, 2299-2300) [*Affirmed as modified*]

36. The opposition of organizations opposing SB 615 was genuine, longstanding, and not inspired by Byoir or the railroads:

(*a*) The Pennsylvania Association of Second Class Township Supervisors had a real interest in the defeat of SB 615 and its opposition to that bill merely implemented its longstanding opposition to increased truck weights on Pennsylvania highways. The Township Supervisors were responsible for the construction and maintenance of 45,000 miles of highways and 10,000 bridges which would be adversely affected by increased truck weights. (Thomson, 2881, 2889; Reiter, 2301-2302; Hardy, 1251) At least since the adoption of a resolution in 1933 (Thomson, 2891-2892), the Township Supervisors had not only opposed an increase in truck weights but had urged the adoption of legislation reducing them (Thomson, 2891-2899, 2903).

(*b*) The Pennsylvania State Grange had a similar interest in the preservation of rural roads dating from at least 1910 and had opposed increased truck weights for many years. It had adopted resolutions opposing increased truck weights at its conventions in 1950 and 1951 and Beatty Dimit, its Master, had written editorials for the *Grange News* opposing increased truck weights and advocating a weight-distance tax before Byoir ever came into Pennsylvania. (Mahood, 2973-2980; Dimit, 3035-3037, 3046-3049).

(*c*) The automobile clubs had opposed increased truck weights from at least 1941. (Pennsylvania Motor Federation (AAA), Prowell, 2943-2951; Keystone Automobile Club, Dennison, 4783-4784)

(*d*) The interest of the Pennsylvania State Association of Boroughs in truck weights was similar to that of the Township Supervisors and its opposition to increased truck weights dated from at least July 1950. (Hibshman, 3015-3020) [*Denied*]

37. With the approval of the Associated Railroads of Pennsylvania, Reiter asked ERPC for a publicity man and Hardy, a Byoir employee, was sent to him. (Reiter, 2262-2264; P-125, at White, 860-861) Reiter introduced Hardy to the groups opposing the bill and made him available to them (Reiter, 2309; Thomson, 2914) [*Affirmed*]

38. Hardy was in Pennsylvania from late in June to early in August, 1951. (Hardy, 1107) During that period he worked principally with the Township Supervisors and the State Grange under the supervision of H. A. Thomson, who was Secretary of the Supervisors, Joab K. Mahood, who was Executive Secretary of the Grange, and Dr. Dimit, who was Master of the State Grange. (Hardy, 1112; Mahood, 2986; Thomson, 2914-2915) Hardy's principal role in his work for the Grange and the Supervisors was to supply facts and statistical information that the organizations wanted (Hardy, 1111-1112, 1179, 1195; Mahood, 2986; Dimit, 3050, 3051, 3052; Thomson, 2914); and to prepare releases for them or discuss the content of letters, or radio programs (Hardy, 1206, 1195, 1191, 1153-1154, 1177, 1179, 1188, 1193; Mahood, 2985, 2988, 2989-2990, 2992-2994; Thomson, 2915). Hardy also assisted these groups to distribute their material and, on occasion, paid some of the costs. (See, for examples: Mahood, 298 ; Hardy, 1198; Thomson, 2917-2918, 2925-2926; Hardy, 696-697, 1116, 1151, 1157) [*Denied*]

39. Hardy and other Byoir personnel provided the state and local auto clubs with information (Hardy, 1128-1129), helped them with newspaper releases (Hardy, 1129, 1158), or letters to their senators (Hardy, 1158, 1183-1184), or, if the club had already prepared or was collecting news

worthy material, Byoir put it in more dramatic form and provided for a broader distribution than it might otherwise have received (Hardy, 1156-1157). [*Affirmed*]

40. Hardy visited newspapers, explained SB 615 and its effects upon the public, presented expressions of local group opinion to the editors, and urged the editors to write editorials in opposition to the bill. Once, upon request, Hardy wrote an editorial. (Hardy, 1129-1130) The editor, of course, was free to accept or reject what Hardy brought him, in whole or in part, or to make whatever use of it that he thought proper. (Swinehart, 17 Hardy, 1329-1330) [*Refused as stated*]

41. Byoir also attempted, sometimes with success and sometimes without it, to obtain an expression of group and individual opinion about SB 615 from the CIO (Hardy, 1148-1149, Pennsylvania Chiefs of Police Association (Hardy, 1150-1151), Parent Teachers Association (Hardy, 1151), United Mine Workers (Hardy, 1178-1179, 1184-1185), Pennsylvania Economy League (Hardy, 1185-1186), and women's clubs (Hardy, 1124-1126, 1152, 1185). [*Refused as stated*]

42. Everyone who dealt with Hardy or other representatives of Byoir acting for the railroads knew who they were, what they were trying to do, why they were doing it, and who was paying them. (Hardy, 1132, 1212, 758-759, 1190; Thomson, 2923, 2939-2940; Mahood, 2985; Dimit, 3050-3051, 3063-3064, 3077-3078) [*Denied*]

43. The material disseminated by the defendants was factually accurate. (Hardy, 1213; Kohn, 5301; see also the Court's observation at 3385) This was a result of Byoir's careful and exhaustive research. (Swinehart, 170; Hardy, 538; Girdler, 417-418) [*Denied*]

44. Despite the activities of the defendants in opposition to the bill, it passed the legislature. [*Affirmed*]

45. After Hardy left Pennsylvania in August 1951, and prior to the Governor's hearing in January 1952, there was no Byoir representative working in Pennsylvania. (Hardy, 1073) The only activities in Pennsylvania in which Byoir was connected were the mailing of a reprint of a *Grange News* editorial, the supplying of information for Dr. Dimit's use in preparing another *Grange News* editorial, and the preparation of a news release to cover the latter editorial. (P-111; P-113; Hardy, 700-704, 727-728) [*Refused as stated*]

VI. THE MARYLAND ROAD TEST.

46. In December 1949, representatives of the highway departments of several eastern states initiated the Maryland Road Test to obtain information which would allow them to determine whether state motor vehicle laws relating to size and weight were proper or should be amended. (Fairbank, 3114-3116) A committee, which included E. L. Schmidt, Secretary of the Pennsylvania Department of Highways, selected the test site, a highway near LaPlata, Maryland, which was similar in both pavement and subgrade to large mileages of highway in the eastern states. (Fairbank, 3118-3121; D-69, Major Finding 2, p. 7; D-69, pp. 59-61) The trucking industry was represented on the group which selected the test site; the railroads were not. (Fairbank, 3122-3123) [*Affirmed*]

47. The test was conducted by the Highway Research Board of the National Research Council on behalf of the highway departments of eleven eastern states, including Pennsylvania, and with the cooperation of the United States Bureau of Public Roads. (D-69, p. 5) The Highway Research Board organized an Advisory Committee, whose members included H. G. VanRiper of the Pennsylvania Department of Highways, John V. Lawrence of the American Trucking Associations, and Deputy Commissioner H. S. Fairbank of the U. S. Bureau of Public Roads. (Fairbank, 3125-3128; D-69, p. iv) [*Affirmed*]

48. The principal-purpose of the test was to determine the relative effects upon existing concrete pavements of four different axle loads: 18,000 pounds and 22,400 pounds on single axles; and 32,000 pounds and 44,800 pounds on tandem axles. Vehicles of each axle loading were operated over separate lanes and the effect of their passage was measured by the progressive pavement cracking. (D-69, pp. 5-6; Fairbank, 3128-3132). The test began in June 1950. In October 1950, the test was discontinued on the 44,800 pound tandem-axle lane because it was very badly damaged. The tests on the other lanes ended in December 1950. (Fairbank, 3135-3140) [*Affirmed*]

49. During the course of the test, a series of progress reports were sent to the members of the Advisory Committee and to the participating states. (Fairbank, 3143-3144). On January 9, 1952, the Highway Research Board sent a draft of "Summary of Major Findings" dated 1/9/52 (D-109, D-53) to the Advisory and Executive Committees, and to the highway departments of the participating states (which included Pennsylvania), the American Trucking Association, the War Department, the Petroleum Institute, the Automobile Manufacturers Association, the U. S. Bureau of Public Roads, and all other interests that were concerned and participating in the test. The Highway Research Board had prepared this draft ~~to be issued as a press release~~ for discussion at its annual meeting on January 14-18, 1952. (Fairbank, 3144-3146; P-267; Fairbank, 3149-3153) [*Affirmed as modified*]

50. Although it was thereafter determined that there should be no further distribution to the public of the draft of 1/9/52, there was never any restriction upon the use to be made by the participating states of any data concerning the test that they received from the Highway Research Board. (Fairbank, 3149-3153, 3331) [*Affirmed*]

51. Clinton Johnson, an independent public relations agent under contract with the Maryland State Roads Com-

mission, did not participate in the conduct of the Maryland Road Test or in the preparation of any of the official Highway Research Board reports concerning it, including the draft of 1/9/52. (Girdler, 453-455, 506, 364-365, 373-374; Fairbank, 3155-3156) [*Affirmed*]

52. The conclusions of the draft of 1/9/52 are substantially identical with the conclusions reached in the final report of the Maryland Road Test adopted on May 1, 1952. The differences are only in minor details and verbiage. (Fairbank, 3320; compare D-109 with D-69) [*Affirmed*]

53. The final report of the Maryland Road Test adopted on May 1, 1952, accurately recounts its findings and makes a comparison of the effects of the various axle loads on the test road. (D-69; Fairbank, 3158-3165) [*Affirmed*]

54. Among the significant major findings of the Maryland Road Test (D-69, pp. 7-11) are the following:

(*a*) "*Predominant Soil Type.* The predominant soil occurring on the test road was a silty clay of the A-6 soil group, which is typical of the soils underlying [an] extensive mileage of concrete pavement in this country." (Major Finding 2)

(*b*) "*Comparison of Effects of Single Axle Loads.* * * * Based on all types of subgrade * * * the 22,400 pound single axle loads caused 6.4 times as much cracking * * * as the 18,000 pound single axle loads * * *." (Major Finding 3)

(*c*) "*Comparison of Effects of Tandem Axle Loads.* * * * Based on all types of subgrade * * * the 44,800 pound tandem axle loads caused 12.3 times as much cracking * * * as the 32,000 pound tandem axle loads * * *." (Major Finding 4) [*Refused as stated*]

55. The Maryland Road Test was an objective test and was so treated and regarded by the Bureau of Public Roads. (Fairbank, 3168; see Laurie, 3646) [*Affirmed as modified*]

56. The Bureau of Public Roads made a motion picture fairly depicting the operation of the Maryland Road Test, its results, and the significance of those results. The narration was prepared by Fairbank. (Fairbank, 3165-3168, 3180-3181, D-71) [*Affirmed*]

57. With the Bureau's permission, Byoir purchased a copy of the film from the film manufacturing company selected by the Bureau. (Fairbank, 3178-3179, 3182-3183) [*Affirmed*]

58. The Bureau had intended to shorten the film and, when Byoir suggested the preparation of a short version that would omit a part of the explanatory portion of the film, the Bureau carefully reviewed Byoir's suggestion and instructed the film manufacturing company precisely what the second film should contain. It was so shortened and Byoir was then authorized to purchase it. The short version of the film does not in any way distort the significance and intent of the film as a whole. (Fairbank, 3183-3184, 3277; D-15; D-17 [*Denied*]

VII. THE GOVERNOR'S HEARING AND THE VETO OF SB 615.

59. On January 17, 1952, Governor Kine, accompanied by Attorney-General Woodside, held a hearing to determine whether he should sign or veto SB 615. (3544) Prior thereto, invitations to or notices of the hearing were sent to those persons and organizations who had expressed their interest in the bill to the Governor. (3721-3722; Thomson, 2918; Mahood, 2990) The hearing was attended by at least 100 persons from 94 organizations. (3544-3769) [*Affirmed*]

A. Opposition to SB 615.

60. Appearing at the hearing in opposition to approval of SB 615 were fifteen persons from fourteen organizations (including women's clubs, the automobile clubs, railroad

labor unions, the State CIO, the Pennsylvania State Grange, the Pennsylvania Association of Township Supervisors, and the Associated Railroads of Pennsylvania). Fourteen of these persons made oral statements (3545, 3549, 3553, 3554, 3560, 3566, 3576, 3577, 3578, 3684, 3685, 3720, 3725) and one of them submitted a written statement (D-52; 3545). [*Affirmed*]

61. A written statement was submitted by the Associated Railroads of Pennsylvania (3545; D-52) Byoir's only contacts concerning the hearing with any of the persons or organizations appearing there were made by Hardy, who came to Harrisburg the night before the hearing. He telephoned Thomson and Mahood to see if they planned to attend. (Hardy, 1094-1095) Both of them had made their own plans to attend before Hardy called them. (Thomson, 2918, 2930; Mahood, 2990; Dimit, 3054; Hardy, 1090, 1091) Just prior to the hearing, Thomson and Mahood told Hardy what they planned to tell the Governor and Hardy prepared summaries of their proposed statements for distribution to the press. (Hardy, 1086-1093, 733-735; Thomson, 2918-2919; Mahood, 2991-2992; P-118, P-119) Both of them prepared their own statements without assistance from Hardy or any other representative of the railroads (Hardy, 1086, 1090, 1091; Mahood, 2992). [*Denied*]

B. Support of SB 615.

62. Appearing at the hearing to urge approval of SB 615 were 85 persons from 80 organizations (including Teamsters' unions, the State AFL, PMTA and other trade associations, and the food, chemical, oil, steel, glass, automotive and manufacturing industries). Twenty-four of these persons made oral statements (3585, 3632, 3633, 3647, 3659, 3663, 3681, 3686, 3698, 3700, 3708, 3710, 3712, 3713, 3715, 3718, 3720, 3729, 3734, 3736, 3745, 3746, 3747) and ten of them submitted written statements (3655, 3656, 3681, 3718, 3631, 3632, 3680, 3717, 3741) [*Affirmed*]

63. PMTA organized and directed the presentation in support of SB 615 at Governor Fine's hearing by:

(*a*) Soliciting the appearance of at least thirty witnesses;

(*b*) Supplying air transportation for witnesses;

(*c*) Preparing seemingly independent statements and resolutions that were submitted by organizations not connected with the trucking industry;

(*d*) Preparing and issuing news releases covering statements made in support of the bill; and

(*e*) Soliciting letters and telegrams to be sent to Governor Fine in such a way as to disguise their PMTA origin and the real interest of the senders.

The presentation was so contrived that even PMTA's attorney who conducted the case in favor of the bill was not aware of the extent to which the witnesses had been mobilized by PMTA. PMTA regarded the presentation as a "commendable job" which made out a far better case for SB 615 than was offered against it. (see evidence supporting counterclaimants' requests 153c to 162c) [*Affirmed*]

C. The Maryland Road Test.

64. At the hearing the Governor participated actively in a discussion of the Maryland Road Test with Gavin Laurie, a PMTA member (PMTA's Answer to Interrogatories 1(b) and 1(c) at 3954) and a proponent of the bill (3636) who was also a member of the Maryland Road Test Advisory Committee (3634, 3644; D-69, p. iv). Laurie told the Governor that the Maryland Road Test was a scientific and honest test (3646), that he agreed with the tentative findings of the test (3637), and that, pending the final report of the Maryland Road Test and the other road tests then underway (3638), he would not take any action on a decision affecting billions of dollars of highways (3646-3647). To-

ward the close of the hearing the Governor stated that he would consult the Pennsylvania Department of Highways about "the Maryland Road Test and some of the engineering features of this argument." (3768) [*Affirmed*]

65. It had been the practice of the Pennsylvania Highway Department to send promptly to the Governor copies of the Maryland Road Test reports (Schmidt, 3810-3811). Burggraf, Director of The Highway Research Board, sent the draft of 1/9/52 to the Planning Division of the Highway Department. The Planning Division received the report on January 10, 1952, and sent it to Secretary Schmidt on the same day. (D-109; Schmidt, 3809-3810) Schmidt sent it to the Governor, so that before the hearing he had that report (Schmidt, 3810-3811; see defendants' request 49) as well as a Maryland Road Test report entitled "Summary of Major Findings as Based on Stress and Deflection Tests" (compare D-110 with the Governor's statement at 3636A). [*Affirmed*]

D. The Position of the Pennsylvania Highway Department.

66. From at least 1939, and certainly long before Byoir came into Pennsylvania or was hired by ERPC, the Pennsylvania Department of Highways had expressed its opinion publicly (3797, 3800-3802) and to the Governor (3790, 3800-3802, 3831) and the legislature (3787) that existing legal truck weight limits were sufficiently high and in many cases higher than the roads could stand. (Schmidt, 3784-3807; D-113; D-100; D-99; D-112). [*Affirmed*]

67. Before the Governor's hearing, Schmidt, as Secretary of Highways, had given the Attorney-General a memorandum (D-111, Schmidt, 3803-3807) containing the Department of Highways' recommendation that SB 615 be vetoed because, consistent with the Maryland Road Test results (D-111 at Schmidt, 3805-3806), a high percentage of Penn-

sylvania highways having a relatively old age would have suffered definite damage when subjected to loads in excess of the AASHO limits of 18,000 pounds for a single axle and 32,000 pounds for tandem axles (D-111 at Schmidt, 3806-3807). The memorandum was based partly upon questionable statistics furnished the department by Marine of Byoir on behalf of the railroads. [*Affirmed as modified*]

E. The Veto.

68. If enacted SB 615 would have, among other things:

(*a*) permitted a maximum axle load of 21,000 pounds (20,000 pounds plus 5% tolerance) without penalties—an increase of 1,000 pounds above the then-existing legal limit (D-111 at Schmidt, 3804; D-353, pp. 19, 21);

(*b*) increased the permissible gross weight limit without penalties for a tandem-axle semi-trailer combination to 63,000 pounds (60,000 pounds plus 5% tolerance) (D-353, pp. 18, 21) for a single-axle semi-trailer combination to 50,400 pounds (48,000 pounds plus 5% tolerance) (D-111 at Schmidt, 3804; D-353, pp. 17, 21); and

(*c*) increased the maximum gross weight limit without penalties of a four-wheel vehicle to 34,650 pounds (33,000 pounds plus 5% tolerance) (Class Z, D-353, pp. 13, 21), of a six-wheel vehicle to 49,350 pounds (47,000 pounds plus 5% tolerance) (Class ZZ, D-353, pp. 14, 21), and the permissible axle limit for the latter vehicle from 18,000 pounds to 21,000 pounds (20,000 pounds plus 5% tolerance) (D-353, pp. 18-19). These gross weights could not be obtained without exceeding the legal axle loads provided by the bill. (D-111 at Schmidt, 3805) [*Refused as stated*]

69. If SB 615 had been enacted it would have resulted in increased axle loads since it increased the permissible single-axle weight limit to 21,000 pounds and since it provided increases in gross-weight limits which, as a practical

matter, would necessarily have increased the actual axle-weights of vehicles passing over Pennsylvania highways. For large vehicles the increased single-axle and tandem-axle weights under the bill would have been substantially in excess of the 18,000-pound and 32,000-pound limits recommended by AASHO. The results of the Maryland Road Test, demonstrating the greater highway damage caused by heavier axle loads, were relevant to a consideration of SB 615 because its effect was to increase axle loads. [*Refused as stated*]

70. After the hearing, the Governor invited Secretary Schmidt to present orally his views on SB 615. (Schmidt, 3811) On January 21, 1952, Schmidt listened to the recording of the statements made at the Governor's hearing, and then argued for the veto of the bill, first with Attorney-General Woodside, Deputy Attorney-General Ryder, Chairman Evans of the Turnpike Commission, and the head of the State Police, and, thereafter, with the Governor. (Schmidt, 3212-3814) The Governor then asked Secretary Schmidt and Deputy Attorney-General Ryder to prepare a veto message (P-282) that he edited and signed a few minutes before midnight (Schmidt, 3815-3819; 67). [*Affirmed*]

71. Governor Fine vetoed SB 615 for the reasons set forth in his veto message (P-282):

(*a*) The Governor doubted that the trucking industry paid "its just share of the maintenance of our public highway system." (P-282, p. 2)

(b) Although "theoretically tandem axle loads [were] not increased by this bill," they actually would have been since "under the [then] presently existing permissible gross, it would be impossible, if the load were properly distributed, to obtain a load of 36,000 pounds on a tandem axle of a semi-trailer." (P-282, p. 1) Therefore, the Governor believed that the legisla-

ture should have the opportunity to consider the results of the Maryland Road Test, the tentative findings of which demonstrated the "possible destructive effects which * * * may result from the increase of permissible gross and axle loads." (P-282, p. 2)

(*c*) The trucking industry would not be severely handicapped by postponing passage of the bill since the tandem-axle weights it provided were lawful only in a very few states. (P-282, p. 2)

(*d*) The permissible gross weight of certain classes of motor vehicles could only be obtained by exceeding the permissible axle load. (Compare P-282, p. 2, with D-111 at Schmidt, 3805)

(*e*) The $25 fine for violation of the permissible axle load was inadequate. (P-282, p. 2)

(*f*) The fine for overloading on posted roads and bridges should have been, and was not, as high as the fines for overloading on primary roads. (P-282, p. 2) [*Refused as stated*]

72. There is no competent evidence that anything Byoir or the other defendants did or did not do caused the Governor's veto of SB 615. [*Denied*]

VIII. PLAINTIFFS' "INJURY"—A CONSEQUENCE OF THE SOVEREIGN'S ACT.

73. The veto of SB 615 by Governor Fine represented the sovereign act of the Commonwealth of Pennsylvania, and caused no injury to the plaintiffs. [*Refused as stated*]

IX. PLAINTIFFS' LEGISLATIVE CAMPAIGN IN PENNSYLVANIA IN 1953 AND DEFENDANTS' OPPOSITION THERETO.

74. In 1953 plaintiffs again conducted an extensive public relations campaign to promote passage of their bill.

(see evidence supporting counterclaimants' requests 28c, 29c, 49c, 50c, 55c, 67c, 84c, 87c, 88c, 92c, 94c) The railroads again opposed PMTA's program to increase truck-weight limits and Hardy came to Pennsylvania where his activity was similar to what it had been during the 1951 session. (Mackie, 1469-1471; Hardy, 747-748) There is no competent evidence that anything the defendants did or did not do caused the defeat of PMTA's 1953 truck-weight bill. [*Affirmed*]

X. THE BYOIR MAGAZINE DEPARTMENT.

75. Byoir maintained a magazine department whose function, for the railroads, was the promotion of magazine articles discussing the highway construction and maintenance required by big trucks and their payments for the use of the highways. It carried on comprehensive research on these subjects and assembled scientific data, reports from specialized publications, newspaper clippings, and the results of interviews with experts such as personnel of the U. S. Bureau of Public Roads, the American Association of State Highway Officials, and the Highway Research Board. (Hartwell, 1375, 1377-1379) The extent of Byoir's assistance to writers and editors varied. On one occasion, with the full knowledge of the magazine, Byoir supplied a fully written article. (P-173; Hartwell, 1347) On a few other occasions, where an author was not sure that the idea would produce a saleable article, Byoir paid him for the time expended on research. (P-49, D-42; Hartwell, 1396-1398; Swinehart, 212) In most instances, Byoir did no more than supply research material to the author or magazine (D-39, P-172, D-43, D-44, D-48), or simply give the author access to its research library (P-200). There is no evidence that any of the articles so produced contained anything but truthful and accurate information. (See Hartwell, 1339-1367, 2152-2180, 2208-2210, 2226-2237; D-39, D-40, D-42 to D-45, D-48, P-49, P-171 to P-173, P-181, P-185, P-200) [*Denied*]

XI. ACTIVITIES OF DEFENDANTS OUTSIDE PENNSYLVANIA.

76. The activities of defendants in states other than Pennsylvania had no material effect within Pennsylvania. [*Denied*]

77. There is no competent evidence that anything Byoir or the other defendants did or did not do caused enactment of the New York weight distance tax, New Jersey truck-weight restrictions, or any other legislation. [*Denied*]

78. Defendants advocated legislative relief in states other than Pennsylvania and used the third-party technique heretofore described (see defendants' requests 24-28) by cooperating with and assisting a number of groups and organizations. The evidence shows the following with respect to Byoir's cooperation with these groups:

(*a*) Empire State Transport League was formed in 1950 when a number of individuals indicated to a railroad representative their desire to cooperate with the railroads concerning the highway problem. (Girdler, 321-322) Through the assistance of Byoir they joined together as the Empire State Transport League and thereafter issued letters and press releases prepared by Byoir relating to the highway problem. The expenses of the organization were paid by defendants and the material it issued consisted entirely of reprints of articles, speeches or resolutions, and factual comments thereon. (P-30 to P-33, P-73, P-291, P-293, P-295A) There is no evidence that any of this material was factually inaccurate or misleading. It had no connection with Pennsylvania other than one mailing to the Pennsylvania Highway Department containing reprints of a New York State Grange resolution and an editorial from a Buffalo newspaper. (P-291, P-293, P-295A) This was long before Byoir came into Pennsylvania, and the accuracy of this material is attested by the fact that the Pennsylvania Highway Department compiled Pennsylvania

figures comparable to the New York figures in the Grange resolution, with similar results. (P-298)

(*b*) The New Jersey Citizens Tax Study Foundation was made up of many prominent citizens active in the civic affairs of that state who were concerned about its tax problems, including its highway problem. (Hardy, 596-603) One of its founding members was Hardy, a Byoir employee, and the defendants gave it financial support. (P-76 to P-78; Hardy, 802) The purpose of the organization was to publicize the Fifth Report of the New Jersey State Tax Policy Commission. (Hardy, 597, 804-805) This Report was an exhaustive survey of New Jersey's tax structure, a small portion of which dealt with highway user taxes. This aspect was not emphasized disproportionately in the publicity material of the New Jersey Citizens Tax Study Foundation. (D-3; Hardy, 807; P-79; see defendants' request 82) There is no evidence that any of its material was factually inaccurate or misleading or that it had any impact or effect in Pennsylvania.

(*c*) The New Jersey Auto Owners, as its name implies, was a group representing the interest of private car owners in New Jersey's highway problem. Formed prior to World War II it became inactive during the war and was revived thereafter with the assistance of Byoir. (Hardy, 543) Its president was then the Chairman of the Roads Committee of a local community and therefore had a particular interest in the highway problem. (Hardy, 543, 811) Defendants gave the organization financial assistance and Byoir assisted in varying degrees in its publicity efforts, including press releases on local speeches by its officers and the preparation of pamphlets and articles. (P-59, P-64, P-66 to P-70, P-80 to P-87; Hardy, 548, 560-561, 565, 569-571, 573-576, 582-587, 611-618) There is no evidence that any of its material was factually inaccurate or misleading or that it had any impact or effect in Pennsylvania.

(*d*) The Citizens Public Expenditure Survey was a New York state taxpayers group which had, therefore, a special interest in the highway finances of the state. In furtherance of this interest it sponsored an exhaustive study entitled "Highway Finances and Taxation in New York" which appeared early in 1930. (D-10) The study was prepared by Griffenhagen & Associates, a firm expert in the field of state and local taxation, which some years before had done a study of the highway taxation problem of Illinois. A railroad representative assisted the Citizens Public Expenditure Survey in making its arrangements with Griffenhagen for the study. (Girdler, 447; P-239; Littlefield, 2079-2080, 2144) Like many others, the study indicated that heavy trucks were not paying their fair share of highway costs. (see defendants' request 17; D-10) The Pennsylvania Railroad was a regular contributor to the Citizens Public Expenditure Survey, contributing $1,601 in 1950 (the year when the report was published), $2,666 in 1951 and $3,713 in 1952. (P-139 to P-141) There is no evidence that the Griffenhagen study, or any other material disseminated by Citizens Public Expenditure Survey, was factually inaccurate or misleading or that it had any impact or effect in Pennsylvania.

(*e*) The Citizens Tax League was a taxpayers' group in the City of Rochester, New York. (Girdler, 443) It, therefore, had a specific interest in the subject of highway taxation and its executive director had pronounced views on the subject. (Girdler, 349) Byoir assisted it in the preparation of news releases and ERPC paid the expenses of the preparation and dissemination of some of its material, including releases and pamphlets containing involved statistical material. (P-39 to P-45; Girdler, 350-354) There is no evidence that any of this material was factually inaccurate or misleading or that it had any impact or effect in Pennsylvania.

(*f*) The Save Our Highways Club was a group of railroad men in Tennessee interested in the railroads' position on highway taxation. (Girdler, 390; Hardy, 636) On occasion Byoir supplied this group with reprints of published material and paid for their dissemination. (Hardy, 636; P-96) The group had a number of members in Ohio and defendants arranged for its incorporation in that state, but the evidence is that it took no action there. (Hardy, 637; P-96B to P-96D) There is no evidence that any material disseminated by the group was factually inaccurate or misleading or that it had any impact or effect in Pennsylvania.

(*g*) The Farm Roads Foundation was formed by an agricultural journalist and other agricultural leaders for the purpose of expressing the interest of farmers in the highway problem. (Bailey, 2366, 2368-2369, 2373, 2398-2399) In cooperation with the editors of *Country Gentlemen*, a publication of the Curtis Publishing Company, it sponsored the production and distribution in 1953 of a film called "Highways and Byways—USA". The interest of *Country Gentleman* in the project was stimulated by the large farmer response it had received from an article it had previously published on the subject and representatives of *Country Gentleman* participated actively in the production and editing of the film and script. (P-194; Bailey, 2378-2381, 2388, 2394) The film was contributed and its distribution was underwritten by the Western Association of Railroads and ERPC reimbursed the Western Association of Railroads for a portion of the cost thereof. (P-192A to P-192E; Bailey, 2377, 2398; Mackie, 1479-1482; Hutchinson, 1863-1864) On one occasion, Byoir made a few critical comments concerning the script of the film (P-191) but there is no evidence that the comments were adopted or that the defendants had anything else to do with the preparation of the film. The film itself is a fair dramatic representation of the special interest of farmers in the highway

problem. (P-271) The film was not distributed until 1953 and there is no evidence that it was factually inaccurate or misleading or that it had any impact or effect in Pennsylvania. [*Denied*]

79. Byoir operates two services, one for the East and one for the Midwest, which distribute photographic mats free of charge to newspapers requesting them. The existence of these services is well-known in the newspaper industry and the mats themselves bear the address of Byoir's New York or Chicago office. (Hardy, 1079, 1235, 1238, 1327, 1328) On occasion Byoir made use of these services to disseminate publicity designed to focus public attention on the highway problem. (P-149 to P-152) On occasion Byoir employed SC Syndicate for the same purpose. As is well known in the industry, this syndicate, for a fee, will distribute mats and textual material free to newspapers, presented in such a way as to be appealing. (D-8; P-153; Hardy, 1077-1078) There is no evidence that any of the foregoing material was factually inaccurate or misleading or that it had any impact or effect in Pennsylvania. [*Denied*]

80. In order further to focus attention on the highway problem, ERPC paid for two public opinion polls conducted by Princeton Research Service, a concern regularly engaged in this field much in the manner of the Gallup Poll or the Roper Poll. (Hardy, 816-817a). As a regular feature of its service, Princeton Research will, for a fee, poll public opinion on special subjects (Hardy, 818-819) and Byoir arranged for such special polls in New Jersey and in New York (Hardy, 822). The New Jersey poll was conducted in cooperation with the Citizens Highway Committee of Newark, New Jersey, which participated in the selection of the questions to be asked and, with Byoir's assistance, issued and disseminated a press release on the results. (Hardy, 624, 1057; P-94, P-90) In a similar fashion, the results of the New York poll were made avail-

able to and were publicized by Citizens Public Expenditure Survey. (Hardy, 1053; P-90, P-91, P-92) Again for the purpose of focusing public attention on the highway tax problem, Byoir retained Fact Finders Associates, Inc., to do a statistical study on the comparative tax rates of various industries, including the trucking industry and the railroad industry, and to publicize the results of its study. (P-105, P-106, P-107; Hardy, 678) Fact Finders has for a long time been engaged in providing such services for a fee, and is well-known for it. (Hardy, 1059, 677) There is no evidence that there was anything factually inaccurate or misleading in the poll results released by Citizens Public Expenditure Survey, The Citizens Highway Committee or the Fact Finders Study or that they had any impact or effect in Pennsylvania. [*Denied*]

81. Mrs. Bessie Q. Mott was a consultant in the field of women's interests who worked for Byoir on a regular monthly retainer. She was well-known in this field as a professional public relations consultant and was also vice-chairman of the American Home Department of the New York State Federation of Women's Clubs and chairman of its Public Affairs Department. (Swinehart, 121; P-14, P-16G). It was her function to interest women's groups in the subject of transportation and to assist in setting up women's club meetings on that subject. (Swinehart, 120-122; P-16G; P-16H) but the record does not disclose whether she was successful in this endeavor. Sometime after May 1952, Byoir helped to prepare and paid for a pamphlet published by Mrs. Mott entitled "Are We Being Railroaded Into Socialism?" which discussed many railroad problems, including incidentally the highway problem. (P-12; Girdler, 314-315) It was not published until the middle of 1952 and there is no evidence that it was factually inaccurate or misleading or that it had any impact or effect in Pennsylvania. [*Denied*]

82. The New Jersey State Tax Policy Commission was an official body set up by the New Jersey Legislature to

investigate and report on state fiscal matters. (D-3, pp. iii-iv; Hardy, 767, 785) It was headed by Dr. John F. Sly, a member of the faculty at Princeton University, who also heads a department of the university which does research work on local governmental problems. (Mackie, 1549-1550) In the Spring of 1950, the Commission issued its Fifth Report covering a variety of local tax problems, including the highway problem. As have surveys in many other states, the Fifth Report indicated that heavy trucks were not paying their fair share of highway costs and recommended a weight distance tax in New Jersey. (see defendants' request 17; D-3, p. 113; Mackie, 1661) In the Summer of 1949, a representative of the Associated Railroads of New Jersey, in preparing for his appearance before a committee of the United States Senate, became aware of a number of studies bearing on the highway problem which he called to Dr. Sly's attention. (Mackie, 1428, 1552, 1626) In December, 1949, counsel for the New Jersey Auto Owners made a statement for that group at a public hearing held by the Commission, copies of which were reproduced by Byoir. Byoir also prepared for him statistical material contained in supplementary data he submitted. P-85, P-86; Hardy, 615-617; Mackie, 1430) There is no evidence that any of this material was factually inaccurate or misleading, and plaintiffs failed to prove that the Fifth Report of the New Jersey State Tax Policy Commission was anything other than a sincere, unbiased and authoritative report on the subject to which it was addressed or that it had any impact or effect in Pennsylvania. [*Denied*]

DEFENDANTS' REQUESTED CONCLUSIONS OF LAW—PLAINTIFFS' CASE.

I. The Sherman Act is inapplicable to defendants' activities in advocating and opposing legislation. [*Denied*]

II. Defendants' activities were reasonable and did not violate the Sherman Act. [*Denied*]

III. Defendants' rights of freedom of speech, press, assembly and petition preclude the application of the Sherman Act to the activities of the defendants about which plaintiffs complain.

IV. There is no competent evidence that defendants caused the veto of SB 615. [*Refused as stated*]

V. Since the veto of SB 615 was the official act of the Governor of Pennsylvania, this Court may not inquire into the reasons which induced the veto and, therefore, may not conclude that it was caused by defendants. [*Refused as stated*]

VI. Plaintiffs' claim for damages is limited to those resulting from the refusal of Governor Fine and the legislature to increase Pennsylvania's truck weight limits and such damages are not recoverable from the defendants. [*Denied*]

VII. There is no evidence that plaintiffs were, or will be, injured in their business or property, by anything defendants have done or are about to do. [*Denied*]

VIII. Plaintiffs unclean hands bar them from injunctive relief. [*Denied*]

IX. Defendants are entitled to judgment and to recover the costs of this suit. [*Denied*]

Respectfully submitted,

BALLARD, SPAHR, ANDREWS & INGERSOLL,
HUGHES, HUBBARD, BLAIR & REED,
Attorneys for Carl Byoir & Associates, Inc.;

BARNES, DECHERT, PRICE, MYERS & RHOADS,
Attorneys for The Pennsylvania Railroad Company; M. W. Clement, Walter S. Franklin;

HAROLD B. BORNEMANN,
Attorney for Lehigh & New England Railroad Company;

DENNIS P. DONOVAN,
Attorney for Canadian National Railways;

DRINKER BIDDLE & REATH,
Attorneys for The Central Railroad Company of New Jersey, Central Railroad Company of Pennsylvania, Norfolk & Western Railway Company, Western Maryland Railway;

CARL E. GLOCK,
JAMES B. ANDERSON,
Attorneys for Union Railroad Company, Fred W. Okie;

GUCKES, SHRADER & BURTT,
Attorneys for The Baltimore & Ohio Railroad Company;

MONTGOMERY, MCCRACKEN, WALKER & RHOADS,
Attorneys for Eastern Railroad Presidents Conference;

MORGAN, LEWIS & BOCKIUS,
Attorneys for The Chesapeake and Ohio Railway Company, Delaware, Lackawanna & Western Railroad Company, Erie Railroad Company, The Lehigh and Hudson River Railway Company, The New York, Chicago and St. Louis Railroad Company, The Reading Company, R. W. Brown, Joseph A. Fisher;

DANIEL MUNGALL, JR.,
Attorney for Boston and Maine Railroad, Canadian Pacific Railway Company, The Delaware and Hudson Railroad Corporation, Maine Central Railroad Company, The New York, New Haven and Hartford Railroad Company;

MYERS, MCVEIGH, MANSFIELD & O'BRIEN,
Attorneys for The New York Central Railroad Company;

T. W. POMEROY, JR.,
PAUL MALONEY,
Attorneys for Pittsburgh & West Virginia Railway Company, Charles J. Graham;

SAUL, EWING, REMICK & SAUL,
Attorneys for Lehigh Valley Railroad Company.

APRIL 5, 1957.

DEFENDANTS' REQUESTED FINDINGS OF FACT—COUNTERCLAIM.

1. PARTIES, JURISDICTION AND CONCERT OF ACTION.

1c. The counterclaimants are: The Baltimore & Ohio Railroad Company; Boston & Maine Railroad; The Central Railroad Company of New Jersey; Central Railroad Company of Pennsylvania; Delaware & Hudson Railroad Corporation; Erie Railroad Company; Lehigh & New England Railroad Company; Lehigh Valley Railroad Company; Maine Central Railroad Company; The New York Central Railroad Company; New York, New Haven & Hartford Railroad Company; New York, Ontario & Western Railway; Norfolk & Western Railway Company; The Pennsylvania Railroad Company; The Reading Company; Western Maryland Railway; and Eastern Railroad Presidents Conference (ERPC). Each counterclaimant is a corporation except ERPC, which is an unincorporated association. [*Affirmed*]

2c. Counterclaimants, other than ERPC, are railroads which operate in the area generally east of the Mississippi and north of the Potomac Rivers (hereafter called "Eastern Territory"), and are engaged in the transportation of passengers and the hauling of freight in interstate commerce. (Counterclaim, paragraph 1, at 3951) [*Affirmed*]

3c. Counterclaimant ERPC is an unincorporated association having offices at 143 Liberty Street, New York, New York. Its membership consists in the main of the presidents or trustees of defendant railroads, including counterclaimants. (Counterclaim, paragraph 2, at 3952) [*Affirmed*]

4c. The plaintiffs against whom the counterclaim is brought are: Noerr Motor Freight, Inc.; Kramer Bros.

Freight Lines Inc.; McLean Trucking Company; Lansdale Transportation Company; T. M. Zimmerman Co.; Darl D. Womeldorf, an individual t/a W. I. Womeldorf & Sons Co.; Rodgers Motor Lines, Inc.; Akers Motor Lines, Inc.; Keystone-Lawrence Transfer & Storage Co.; W. J. McCormick, an individual t/a W. J. McCormick Truck Transportation; Thomas W. Martin & W. Thayer Martin, partners t/a Martin Brothers; Julius Gardocky, an individual t/a Pennsylvania Transfer Company; Floyd W. Lusk, an individual t/a F. W. Lusk Transfer Company; The Davidson Transfer and Storage Company; Suwak Trucking Company; C. W. Dillie, an individual; A. W. Bauman, Jr., an individual t/a A. W. Bauman, Jr. Trucking Company; A. K. Martsolf, Clyde E. Martsolf, C. Harold Martsolf and Lester H. Martsolf, partners t/a Martsolf Bros.; Spector Motor Service, Inc.; G. C. Braden, an individual t/a G. C. Braden Trucking Company; Edward G. Horn, an individual t/a Edward G. Horn Trucking; Seaboard Tank Lines, Inc.; Friedman's Express, Inc.; Karn's Transfer, Inc.; Lombard Bros. Inc.; Lester C. Newton Trucking Company; Neil J. Bast and Karl Bast, partners t/a D. F. Bast; E. W. Chadderton, an individual t/a Ed. Chadderton Trucking; Cooper-Jarrett, Inc.; Eastern Freight-Ways, Inc.; Fowler & Williams, Inc.; William F. Crossett, Inc.; Fischbach Trucking Co.; Hall's Motor Transit Company; Mushroom Transportation Company, Inc.; Miller Motor Express, Inc.; Yale Transport Corporation (Yale Rental Corporation); Daily Motor Express, Inc.; McCullough Transfer Co.; York Transportation Company, Inc.; and Pennsylvania Motor Truck Association (PMTA). Each plaintiff is a corporation, except where it is indicated that a plaintiff is an individual or a partnership. (Plaintiffs' Answers to Interrogatories filed on 2/17/53 by Pennsylvania Railroad) [*Affirmed*]

5c. Plaintiffs, other than PMTA, operate trucks in Pennsylvania and in other states within the eastern part of the United States, and are engaged in the long-distance

hauling of freight in interstate commerce in competition with counterclaimants. (Counterclaim, paragraph 3, at 3952) [*Affirmed*]

6c. Plaintiff PMTA is a Pennsylvania corporation, whose membership includes, among others, most of the plaintiffs. (Counterclaim, paragraph 4, at 3952) [*Affirmed*]

7c. PMTA was incorporated in Pennsylvania in 1928 (Complaint, paragraph 2, 3949-3950) to organize individual and county groups "* * * on state-wide basis as result of legislators' advice to present and sponsor unified program desired by trucking industry." (D-212 at 4103) An object of PMTA was "* * *to serve in securing needful laws and regulations; provide protection against unreasonable legislation." (D-198 at 3955-3956) [*Affirmed*]

8c. Most of the plaintiffs are members of PMTA and since 1949 all of the plaintiffs have supported the activities of PMTA by making contributions to the cost of such activities and none has objected to such activities. (Stipulation, paragraph 4, filed 5/17/56, Court Paper No. 460, at 3948-3949) [*Affirmed*]

II. TRADE AND COMMERCE—TRENDS IN FREIGHT TRANSPORTATION.

9c. Between 1936 and 1954 there was a marked increase in the use of heavy trucks in Eastern Territory and in the distance they travelled. This increase has been accompanied by a similar marked increase in the inter-city freight hauled by trucks as compared with that hauled by railroads. Both in the United States as a whole, and in Eastern Territory, the trend of increase of truck traffic since 1939 has been much more pronounced than the trend of increase in rail freight traffic. In Eastern Territory the freight traffic of Class 1 railroads in revenue ton miles has decreased materially while that of Class 1 motor carriers has increased

substantially. For the nation as a whole, and particularly in Eastern Territory, the freight revenues of Class 1 railroads since 1946 have lagged behind increases in the gross national product. On the other hand, freight revenues of Class 1 motor carriers have increased much more rapidly than both rail freight revenues and the gross national product. Substantial traffic has been diverted from rails to trucks because of rates reflecting a cost advantage enjoyed by motor carriers through their use of public rights-of-way. (Counterclaimants' Requests 10c to 23c) [*Denied*]

10c. In 1954, in Eastern Territory, truck registrations were 184% of truck registrations in 1936. (D-95, D-95A at 3388) Between 1936 and 1954, the frequency of occurrence of heavy axle loads increased as follows:

Axle Loads	1936	1954	Percentage of 1936 Total
18,000 lbs. or more	34 per 1,000	120 per 1,000	353%
20,000 lbs. or more	14 per 1,000	63 per 1,000	450%
22,000 lbs. or more	6 per 1,000	31 per 1,000	517%

(D-96, 96A at 3391-3392)

Travel in vehicle miles of trucks and truck combinations (which are primarily railroad-competitive tractors and semi-trailers) increased as follows:

Type	1936	1954	Percentage of 1936 Total
All trucks and combinations	5,810,000,000	14,040,000,000	242%
All single unit trucks	4,639,000,000	8,450,000,000	183%
Truck combinations	1,180,000,000	5,590,000,000	474%

(D-97, D-97A at 3395-3397) [*Affirmed*]

11c. In 1950, in Pennsylvania truck registrations were 175.1% of truck registrations in 1936. They had increased from 277,000 to 485,000 (D-115 at p. 4, D-115A, D-116, at 3481-3483) [*Affirmed*]

12c. Between 1939 and 1955, the legal axle load and gross weight limits of trucks and combinations in Pennsylvania were increased as follows:

TWO-AXLE TRUCK OR TRUCK-TRACTOR

Year	Front Axle	Rear Axle	Gross
1939	18,000 lbs.	18,000 lbs.	26,000 lbs.
1943 } 1945 }	20,000 lbs.	20,000 lbs.	30,000 lbs.
1955	22,400 lbs.	22,400 lbs.	33,000 lbs.

THREE-AXLE TRUCK OR TRUCK-TRAILER

Year	Front Axle	Rear Axles	Gross
1939	8,000 lbs.	16,500 lbs. ea.	36,000 lbs.
1943 } 1945 }	8,000 lbs.	18,000 lbs. ea.	40,000 lbs.
1955	22,400 lbs.	18,000 lbs. ea.	47,000 lbs.

SINGLE AXLE SEMI-TRAILER

(Whether drawn by two or three axle truck-tractor, axle limits for truck-tractor as previously indicated.)

Year	Trailer Axle	Gross Weight
1939	18,000 lbs.	39,000 lbs.
1943 } 1945 }	20,000 lbs.	45,000 lbs.
1955	22,400 lbs.	50,000 lbs.

TANDEM AXLE SEMI-TRAILER

(Whether drawn by two-axle or three-axle truck-tractor, axle limits for truck-tractor as previously indicated.)

Year	Trailer Axles	Gross Weight
1939	18,000 lbs. ea.	39,000 lbs.
1943 } 1945 }	20,000 lbs. ea.	45,000 lbs.
1955	18,000 lbs. ea.	60,000 lbs.

From 1939 through 1955, it was always permissible to carry a gross vehicle weight of 62,000 pounds on combinations of a truck and full trailer at least one of which had three axles. (D-117) [*Affirmed*]

13c. In Pennsylvania, between 1941 and 1950, the registration of trucks in the 10 heaviest classifications increased by 131%. (D-115 at p. 5, D-115B; Myers, 3493-3494) [*Affirmed*]

14c. In Pennsylvania, between 1936 and 1950, the frequency of occurrence of axle loads of 18,000 pounds or over increased as follows:

Type	1936	1950	Percentage of 1936 Total
All trucks and combinations	2.1 per 100	13.2 per 100	628%
Semi-trailer combinations	8.2 per 100	38.1 per 100	464%

(D-115 at p. 11, D-118, D-118A, Myers, 3490-3493)

In 1936, of the loaded and empty semi-trailers weighed, 29.21% were over 30,000 pounds; and in 1950, 56.95% weighed over 30,000 pounds. (D-115 at p. 9 and table following) Between 1936 and 1950, the average gross weight of loaded semi-trailer combinations increased from 27,490 pounds to 37,000 pounds, an increase of 35%. (D-115 at p. 10; Myers, 3495-3496) [*Affirmed*]

15c. In the United States as a whole, rail freight traffic in ton miles for the year 1954 was 164% of rail freight traffic in 1939; whereas truck traffic in 1954 was 406% of truck traffic in 1939. (D-199) [*Affirmed*]

16c. In the United States as a whole, of the total ton miles of freight carried by rail and truck in 1939, 86.51% was carried by rail and 13.49% carried by truck. In 1954, 72.17% was carried by rail; whereas 27.83% was carried by trucks. Thus by 1954 the rail share had declined to 83% of its 1939 proportion and the truck share had increased to 206% of its 1939 proportion. (D-200, D-201) [*Affirmed*]

17c. In Eastern Territory in 1954, the traffic carried by Class 1 railroads in revenue ton miles was 79% of that carried in 1946; whereas the traffic in revenue ton miles carried by Class 1 motor carriers in 1954 was 255% of that carried in 1946. (D-202) [*Affirmed*]

18c. In Eastern Territory the freight revenues of Class 1 railroads in 1954 were 199% of such revenues in

1939; whereas the revenues of Class 1 motor carriers in 1954 were 774% of such revenues in 1939. (D-203) [*Affirmed*]

19c. Freight revenues of Class 1 motor carriers in Eastern Territory have risen much more rapidly than freight revenues of Class 1 railroads because the trucks carry the "cream traffic", *i.e.* traffic for which higher rates can be charged. Trucks receive about 6¢ for each ton mile carried by them while the railroads receive about 1.4¢. (Behling, 3986-3987) [*Denied*]

20c. In the United States as a whole, during the period 1939-1954, Class 1 railroad freight revenues have increased at a rate less than that of the gross national product. Relatively the freight revenues of Class 1 motor carriers have increased much more than the revenues of the railroads and the gross national product. The freight revenues of Class 1 railroads in Eastern Territory have increased at a rate less than that of the revenues of Class 1 railroads in the national as a whole. (D-204, Behling, 3987-3991) [*Affirmed*]

21c. In the United States as a whole, in 1928, the railroads transported, in tons, 46.75% of the national production. In 1946, that ratio had declined to 38.36%, and by 1952, it had further declined to 31.37%. The relative loss of traffic by the railroads was greater in the six-year period 1946 to 1952, than in the 18-year period, 1928 to 1946. Between 1947 and 1949, the annual decline was more severe than that found in any pre-war year. The reduced percentage of the national production carried by rail was accounted for largely by diversion to other means of transport, much of which was to motor carriers. (D-205, Behling, 3992-4090) [*Refused as stated*]

22c. Examples of the type of traffic which has been diverted from railroads to motor carriers are fresh fruit and vegetables (D-206 at 4000-4005), candy, alcoholic bever-

ages, canned goods, iron and steel articles, soda products, soap and cleaning compounds, malt liquors, glass containers, fertilizer materials, brass, bronze and copper articles, aluminum articles and window glass. Much of this traffic was diverted from rails to trucks because of the rates offered by motor carriers. (McMichael, 4081-4090; decisions cited in "Memorandum of Decisions of the Interstate Commerce Commission, etc." filed 1/22/57 at 5709-5714; D-206) [*Refused as stated*]

23c. A substantial factor enabling motor carriers to charge attractive rates is that motor carriers enjoy the cost advantage of operating on public rights-of-way. Railroads must build, improve, maintain and pay taxes on their rights-of-way. (Behling, 4005-4016) [*Denied*]

III. PLAINTIFFS' PROGRAM AND ITS EXECUTION.

A. Public Relations Effort to Attain Legislative Objectives.

24c. Since at least 1943 PMTA has actively sought to attain legislative objectives through a broad-scale public relations program. The program was financed by special contributions from the trucking industry both within and without Pennsylvania, including $100,000 from American Trucking Associations, Inc. In 1953 alone PMTA spent over $350,000 on this effort. The cost of financing the present action was included in the above stated sums. (Counterclaimants' Requests 25c to 29c) [*Affirmed as modified*]

25c. Since 1941 PMTA has employed public relations personnel, has maintained a public relations department, and has retained independent public relations counsel to assist it in achieving its legislative goals. (Lebow, 4130, 4131; D-209 at 4099; D-210 at 4101; D-213 at 4112; D-214 at 4122; D-215 at 4123; D-219 at 4172; D-221 at 4176; D-226 at 4209; D-239 at 4238) In May, 1950, PMTA announced that, since its problem was "obviously a legislative one", it in-

tended to achieve its legislative objectives by fighting its battle "on the public relations front". (D-549 at 5326) [*Affirmed*]

26c. PMTA's public relations program was financed by contributions to its Sustaining Membership Fund. (Gormley, 5377, 5378; D-225 at 4208; D-229 at 4211) [*Affirmed*]

27c. Allied Public Relations Associates, Inc., a New York public relations firm, was retained by PMTA in April, 1952, to handle its public relations. (Noerr, 5441-5444) [*Affirmed*]

28c. Since 1948 PMTA's public relations expenses have followed a rising trend. In 1952, its public relations expenses amounted to $175,389.01; in 1953, they amounted to $364,147.37. (D-566E at 5374; D-566F at 5376) To help meet its then-current fund-raising goal of $859,927, in the Fall and Winter of 1952-1953, PMTA held large meetings of truck operators in Baltimore, Washington, D. C., Charlotte, Richmond, Akron, Newark, New York and Philadelphia. (D-555 to 559 at 5350-5357; D-561 to D-564 at 5360-5365) The main purpose in the year 1952-1953 of solicitation of funds was to combat the railroad program against the truckers waged over the prior three year period. [*Affirmed as modified*]

29c. In August, 1952, PMTA applied to American Trucking Associations, Inc. for an allotment of $100,000 to help finance its public relations program. That sum was paid to PMTA in 1953. (D-570 at 5400; D-242 at 4247; D-571 to D-574; Atherton, 5403-5424; Gormley, 5425-5429) [*Affirmed*]

B. The Approach to the Legislature and Political Parties.

30c. It was a basic part of plaintiffs' program to establish close liaison with members of the Pennsylvania legisla-

ture, ~~to mete out rewards and punishments to them,~~ and to create and maintain a position of influence with the legislature in order to achieve PMTA's objectives. In 1950, 1952, and 1954, the trucking industry acting through Harry L. Gormley, Treasurer of PMTA, conducted active campaigns to raise money for both major political parties in Pennsylvania. Gormley delivered, or attempted to deliver, such money in approximately equal amounts to those parties. (Counterclaimants' Requests 31c to 39c) [*Affirmed as modified*]

31c. PMTA encouraged its members to take an active part in party politics to aid in obtaining or defeating legislation. (D-283 at 4354) [*Affirmed*]

32c. PMTA has maintained special committees to establish contacts with Pennsylvania legislators at the county level and to urge support for PMTA's legislative program. (Gormley, 4538-4542) [*Affirmed*]

33c. PMTA endeavored to maintain "live and continuous liaison with legislators, candidates and State officials". (D-293 at 4370; D-295 at 4372; D-296 at 4373; D-297 at 4373) [*Affirmed*]

34c. To accomplish its legislative objectives PMTA sought to mete out to legislators "rewards and punishments" dependent upon whether they had supported or opposed PMTA sponsored legislation. (D-318 at 447; D-320 to D-321 at 4449-4453; D-261 at 4311; D-323 at 4456; D-343 at 4500; D-357 at 4587-4601) [*Refused as stated*]

35c. PMTA maintained its liaison with legislators through direct personal contacts in Harrisburg by "legislative consultants" paid to assist in preparing bills and to influence legislation. Among its legislative consultants was Samuel B. Dennison, who had previously been a member of the Pennsylvania House of Representatives (1941 to 1951 sessions), and for a long time (1947 to 1951 sessions) had

been Chairman of the House Motor Vehicles Committee. (Dennison, 4751-4752, 4765-4766; D-357 at 4600) [*Affirmed*]

36c. So that the trucking industry would be "recognized" at the "State level", Harry L. Gormley, President of Keystone-Lawrence Transfer & Storage Company (a plaintiff), and Treasurer of PMTA, was designated in 1950, 1952 and 1954 by representatives of the trucking industry, including officers of PMTA, to handle on an industry-wide basis the collection of money for the Republican and Democratic parties in Pennsylvania. (Gormley, 4554, 4555, 4570-71, 4574, 4576, 4578, 4585) [*Affirmed*]

37c. In 1950 Gormley collected approximately $76,000 from 600 to 700 representatives of the trucking industry. In the presence of Edward Gogolin, General Manager of PMTA, Gormley delivered $37,000 to the Republican Party and $39,000 to the Democratic Party. (Gormley, 4557, 4560-4569) [*Affirmed*]

38c. In 1952, Gormley collected from representatives of the trucking industry approximately $35,000. Of this money, $19,000 was delivered to the Democratic Party, but the balance, $16,000, was not then delivered to the Republican Party. (Gormley, 4580, 4582-4583) [*Affirmed*]

39c. In 1954, Gormley collected from representatives of the trucking industry approximately $44,000. Of this, $30,000 was delivered to the Democratic Party, and the balance of $14,000, to which was added the $16,000 not previously delivered, was turned over to the Republican Party. These sums were delivered by Gormley in the presence of Floyd B. Noerr, President of PMTA. (Gormley, 4584-4586, 4587) [*Affirmed*]

C. Legislative Efforts To Divert Business From Counterclaimants.

(1) *Special Legislative Treatment for the Trucking Industry.*

40c. Since as early as 1932, PMTA has sought to secure legislation that would permit plaintiffs to increase permissible truck weights and to defeat legislation that would increase truck fees and taxes, ~~thus enabling plaintiffs to divert business from counterclaimants.~~ In carrying out this program, PMTA organized support among trucking and non-trucking groups, concealed PMTA's role as the organizer of such activity, and prepared and introduced bills into the legislature. (Counterclaimants' Requests 41c to 44c) [*Affirmed as modified*]

41c. Beginning as early as 1932, PMTA consistently opposed legislation to increase truck license fees, to impose taxes on trucks, and to make available for general revenue purposes license fees and gasoline taxes. (D-212) These efforts continued until at least 1953. PMTA claimed that it defeated a ton mile tax, defeated legislation to double or triple overload fines, defeated a boost in registration fees, removed the gross receipts tax law from the books, and obtained amendments to the wage and hour law regulations to exempt truck operators. (D-575, D-212) [*Affirmed*]

42c. Commencing in 1941, PMTA embarked upon a program to increase the loads which trucks could carry legally in Pennsylvania. To this end it caused to be prepared and to be introduced in the Pennsylvania legislature in 1941, 1943, 1945, 1947, 1949, 1951, 1953 and 1955, bills, each of which was intended to increase the permissible weight limits of trucks. (HB 690 of 1941, D-346; HB 634 of 1943, D-348; HB 614 of 1945, D-349; HB 1020 of 1947, D-351; HB 560 of 1949, D-352; SB 615 of 1951, D-353; HB 1390 of 1953, D-354; HB 1288 of 1955, D-356; Gogolin, 4505-4534; 5804) [*Affirmed*]

43c. In 1947, 1949, 1951, and 1953, PMTA sought to obtain enactment of bills to increase permissible truck weights limits by:

(*a*) having truckers write to and make personal contact with legislators;

(*1947:* D-247 to D-248 at 4257-4273; D-249 at 4276; D-250 at 4278; D-251 at 4280; D-252 at 4282; D-253 at 4285. *1949:* D-267 at 4325; D-269 at 4328; D-272 at 4331; D-273 at 4331 *1951:* D-305 at 4389; D-306 at 4391. *1953:* D-334 at 4477; D-336 at 4481.)

(*b*) having representatives of other industries write to and make personal contact with legislators without disclosure that such letters and personal contacts had been solicited by PMTA;

(*1947:* D-254 at 4297; D-255 at 4298; D-256 at 4300; D-257 at 4301; D-258 at 4301; D-259 at 4303. *1949:* D-267 at 4325; D-270 at 4329, D-271 at 4330; D-274 at 4332. *1951:* D-296 at 4372; D-302 at 4380; D-305 at 4389; D-307 at 4413. *1953:* D-329 at 4471; D-331 at 4473; D-332 at 4474; D-334 at 4477; D-335 at 478; D-337 at 4485; D-340 at 4496.)

(*c*) intentionally concealing from legislators and state officials the fact that the letter writing campaign had been organized by PMTA;

(*1947:* D-246 at 4253; D-252 at 4282. *1949:* D-266 at 4324; D-2 at 4325; D-269 at 4328; D-270 at 4329. *1951:* D-303 at 4381; D-304 at 4385; D-307 at 4413; D-312 at 4435.)

(*d*) preparing material for legislators to be used in speeches in the House of Representatives;

(*1949:* D-268 at 4327. *1951:* D-299 at 4377; D-300 at 4378; D-312 at 4435.) [*Affirmed*]

44c. PMTA's truck weight bills were designed to improve the competitive position of the truckers (Gogolin

507, 4511-4512, 4519-4520), to enable the truckers to compete with the railroads ~~in the matter of rates,~~ and to take business away from the railroads (Noerr 5463-5472). [*Affirmed as modified*]

(2) *Attempts to Eliminate Opposition to PMTA's Legislation.*

45c. Since 1947 PMTA has tried to eliminate the opposition to its legislative program of organizations such as Pennsylvania State Grange, Pennsylvania State Association of Township Supervisors, and the railroads operating in Pennsylvania, by applying economic pressure on them, by spreading false propaganda about them, by fostering litigation attacking their leaders, and by attempting through falsehoods to discredit the Maryland Road Test, the Highway Research Board and the U. S. Bureau of Public Roads. (Counterclaimants' Requests 46c to 50c) [*Denied*]

46c. After the Pennsylvania State Grange opposed the bills to increase truck weights introduced by PMTA in the Pennsylvania legislature in 1949 and 1951 (Mahood, 2973-2980; Dimit, 3035), PMTA prepared and published a false and misleading pamphlet about the relationship between the railroads, Byoir and the Grange, and concerning opposition to a trucker's ICC rate application. (Compare 961 with D-65, D-66, D-195, D-196, D-197, Fletcher, 3930-3946, and Dimit, 3062-3068) PMTA distributed 10,000 copies of this pamphlet to members of the Pennsylvania legislature, state, local and federal officials, Grange members, newspapers and radio stations, service organizations, and investment firms. (D-606 at 5513; D-607 at 5514; D-608 at 5515) [*Refused as stated*]

47c. When the Pennsylvania State Association of Township Supervisors opposed PMTA's 1949 truck weight bill, PMTA considered the institution of suit against the association for alleged misuse of Association funds but was advised by counsel that PMTA had no standing to sue.

(Thomson, 2906-2910; P-129, P-130; D-217 at 4168; D-218 at 4169; D-224 at 4204) Early in 1953, immediately after the Association had reaffirmed its opposition to increased truck weights (Thomson, 2898-2899), PMTA's public relations counsel, Allied Associates, arranged to provide attorneys with information to be used in a suit against H. A. Thomson, Secretary of the Association. (D-325, p. 1, paragraph 9) With PMTA collaboration, a suit for alleged misconduct was instituted against Thomson by several members of the Supervisors Association (*Hocker, et al. v. H. A. Thomson, Secretary of Pennsylvania State Association of Township Supervisors*, C. C. P. Dauphin County, In Equity, No. 2064, 2 D & C 2d 95). (4206, 4207) [*Refused as stated*]

48c. When the railroads operating in Pennsylvania opposed the bill to increase truck weights introduced by PMTA into the Pennsylvania legislature in 1947, PMTA urged that its members threaten to route freight over other lines unless such railroad opposition was withdrawn. (D-261 at 4309; D-263 at 4316) [*Affirmed*]

49c. In May 1953 PMTA paid Lewis Gilbert to appear at the stockholders' meeting of the Pennsylvania Railroad to question its management about railroad opposition to PMTA's truck weight legislation, and obtained news coverage highlighting Gilbert's questioning. PMTA circulated among financial writers and others, material adverse to the railroad industry for the purpose of making bankers "queasy" about railroad securities as investments. (D-607 at 5508; D-617 at 5530) [*Refused as stated*]

50c. After the railroads operating in Pennsylvania had opposed SB 615, and after the bill was vetoed by Governor Fine partly because of its "possible destructive effects * * * as demonstrated by the tentative findings of the Highway Research Board" based on the Maryland Road Test (P-282), PMTA publicized a series of false and misleading statements about the Maryland Road Test, the

Maryland Road Test films, and the railroads' alleged connection with them:

(*a*) On April 22, 1953, Floyd B. Noerr, President of PMTA, delivered to Governor Fine a letter falsely asserting that "The 'tenative findings of the Highway Research Board' * * * was a fraud from beginning to end, originated by paid railroad agents, using railroad money." (D-87 at 3245, with which compare Fairbank, 3245-3249 and Laurie, 3646; see also D-88)

(*b*) On April 24, 1953, PMTA issued a press release which falsely stated that:

> "* * * the Maryland Road test films had been drastically edited so as to show that trucks were a ruinous influence on highways, and 'phoney' Maryland Road Test report was cooked up by railroad agents and given to Governor Fine as an official document.
>
> * * *
>
> "The 'tentative findings' of the Highway Research Board * * * were 'fraud from beginning to end, originated by paid railroad agents using railroad money'."

(D-88 at 3248-3249, with which compare Fairbank, 3248-3249, and the fact that PMTA had in its files the "tentative findings" referred to marked "authentic HRB", D-84 at 5763)

(*c*) On May 13, 1952, Edward W. Chadderton, a PMTA member, wrote a letter to the Editor of the Pittsburgh Press falsely stating that "* * * the Maryland Road Test was a farce and proved nothing * * *". (D-90A, D-90B at 3252, with which compare Fairbank, 3252, 3253)

(*d*) On January 6, 1953, David Charnay, President of Allied, wrote to Tom Kennedy, an official of United Mine Workers, falsely saying that "* * * Maryland Road Test No. 1 * * * we are now prepared to prove, was not a valid test, was rigged to produce false results, and was a propaganda stunt by the railroads' public relations agency car-

ried out with the help of a bribed public official." (D-91 at 3253, with which compare Fairbank, 3254-3255)

(*e*) On April 13, 1953, Floyd B. Noerr, President of PMTA, sent a letter to Senator Styles Bridges, Chairman of the Senate Appropriations Committee, containing the following false statements:

"* * * I wish to enter a protest against appropriating funds for the U. S. Bureau of Public Roads to permit it to engage in a campaign to destroy the industry it presumably is supposed to foster both for commerce and for national defense.

"* * * the railroads are planning to spend something over half a million dollars to distribute an edited film putting the trucking industry in an odious light, and also to distribute a pamphlet accomplishing the same sinister purpose, *both with the connivance and approval of the Bureau.* We are reliably informed that, since that time, both purposes have been accomplished and that the U. S. Government, through the Bureau, is now represented in showings in many states as being devastatingly critical of the trucking industry.

* * * * * * *

"You will note the payment of railroad money through Messrs. Johnson, Cohen and others to corrupt public information relative to the subject matter of the same film.

"I respectfully request that you lay these matters before your honorable committee with a view to ending the participation of the U. S. Bureau of Public Roads in a conspiracy by the railroads to defame the trucking industry." (Emphasis by Noerr, D-74 at 3206, with which compare Fairbank, 3208)

(*f*) On May 15, 1953, Floyd B. Noerr, President of PMTA, sent a telegram to Senator Robert Taft containing the following false statements:

"* * * Also request you investigate Byoir's connection with the inexplicable efforts of U. S. Bureau of Public Roads to use tax money to foster circulation by the railroads, with U. S. Government seal of approval, of a vicious moving picture film of the Maryland Road Test designed to injury the highway transport industry and to mislead the Congress and the American public." (D-82A, D-82B at 3228, with which compare Fairbanks, 3229)

(*g*) PMTA published a booklet entitled "The Road Ahead" which falsely states:

"Investigating further, Allied discovered that the U. S. Bureau of Public Roads, a tax-supported federal agency supposedly working in the interest of highway transport, actually had engaged in agreements with the railroads to distribute a very unscientific, doctored film about the supposedly scientific test, with emotionally irritating unscientific pictures and dialogue, designed to turn the public and governmental bodies against the trucking industry." (D-89, p. 11, at 3250, with which compare, Fairbanks, 3250-3251) [*Refused as stated*]

(3) *Efforts to Increase Railroad Taxes.*

51c. Since 1949 PMTA has attempted to increase railroad costs by imposing additional taxes upon railroad property. This program, which constituted a major part of PMTA's public relations activities and expenditures, was carried out by urging state and local investigation of taxes paid by railroads; by preparing and distributing more than 16,000 copies of the "Tax Manual" and the "Law Supplement" among legislators, public officials, press and radio, investment groups, labor unions, courts and law schools; by fomenting the institution of law suits to impose taxes upon railroad property; and by preparing and introducing into the Pennsylvania legislature bills providing for taxation of

railroad rights-of-way. (Counterclaimants' Requests 58c to 58e) [*Denied*]

52c. Commencing in May 1949, PMTA undertook a program to impose additional state and local taxes upon railroads by the enactment of legislation and by the removal of existing local tax exemptions. In carrying out that program PMTA urged the sending of letters to editors (D-624 at 5581; D-625 at 5582), publicized the fact that in certain municipalities railroad property is exempt from local taxation (D-626 at 5584; D-627 at 5585; D-628 at 5586; D-629 at 5587), fomented local investigations of taxes paid by railroads (D-218 at 4171; D-277 at 4340), and considered suit against the railroads to compel disclosure of information regarding railroad taxes (D-630 at 5588). [*Refused as stated*]

53c. PMTA prepared a "Tax Manual" which advocated the imposition of additional taxes upon railroads operating in Pennsylvania. (D-641 at 5612; D-638 at 5599) PMTA thereafter paid an attorney $10,000 to prepare a "Law Supplement" to the "Tax Manual", to advise municipal officials regarding the assessment of taxes upon railroad property, to draft legislation imposing such taxes, and to prepare pleadings and appear in court in connection with taxpayers' suits for the collection of such taxes. (D-637 at 5596; D-654 at 5654) [*Refused as stated*]

54c. PMTA distributed copies of the "Tax Manual," 16,000 copies of the "Law Supplement," and similar material, among the following groups:

(*a*) Pennsylvania state legislators and Congressmen. (D-651 at 5646; D-244 at 4249)

(*b*) Pennsylvania municipal officers and school boards. (D-642 to D-644 at 5619-5620, 5623-5625; D-401A at 5622; D-651 at 5646; D-244 at 4249)

(*c*) ICC officials. (D-651 at 5646; D-244 at 4249)

(*d*) Pennsylvania courts and law schools. (D-651 at 5646; D-244 at 4249)

(*e*) Investment bankers, New York Stock Exchange members and financial writers. (D-633 to D-636 at 5591-5594; D-640 at 5611; D-651 at 5646; D-244 at 4249)

(*f*) Directors of Mack Truck, to be shown "to certain Wall Street connections." (D-650A at 5638)

(*g*) Pennsylvania C.I.O. Council. (D-376 at 4697)

(*h*) Pennsylvania newspapers and radio stations. (D-639 at 5604; D-651 at 5646; D-244 at 4249).

(*i*) Others.' (D-643 at 5622; D-645 at 5626; D-646 at 5629; D-650B to L at 5639-5645; D-651 at 5646; D-244 at 4249) [*Affirmed*]

55c. In 1952 and 1953 PMTA instigated numerous local investigations of tax assessments upon railroad properties (D-401A at 5621; D-645 at 5626; D-647 at 5631; D-648 at 5633; D-649 at 5636; D-652 at 5648; D-656 at 5663), and also fomented the institution of law suits to compel the imposition of additional taxes upon railroad property in many municipalities (D-401A at 5622; D-631 at 5589; D-645 at 5626; D-647 at 5632; D-652 at 5648; D-654 at 5656; D-656 at 5665; D-658 at 5668-5670; D-659 at 5671). [*Refused as stated*]

56c. PMTA mobilized a "field force" to work in municipalities to get all railroad property assessed; to commence mandamus proceedings against assessors refusing to comply; to publicize the amount of taxes which might be collected on exempt railroad property; to start legal actions to force payment of taxes by railroads on exempt property; to get municipalities to join together in such legal actions; to seek legislation removing exemptions on railroad real estate; and to generate letters and editorials to keep the railroad tax issue alive. (D-323 at 5678; D-661 at 5675; D-660 at 5674; D-662 at 5680) [*Refused as stated*]

57c. PMTA prepared, for introduction by Representative Bolton in the 1953 session of the legislature, HB 1387 and HB 1388, which provided for taxation of railroad rights-of-way; and PMTA urged municipal officials and other persons to write to their legislators in support of these bills. (D-665A at 5685; D-665B at 5686; D-664 at 5684; D-341 at 4497; D-342 at 4499; D-344 at 4502; Gogolin, 5689, 5690) This action was taken by the Plaintiffs after the discovery and expose of the railroad-Byoir campaign against the truckers. [*Affirmed as modified*]

58c. PMTA's efforts to impose additional taxes on railroad property were an important part of its legislative program. Both legal and public relations counsel for PMTA agreed that it was PMTA's "only chance for a favorable decision". Allied stated that "immediately after close of the [1953] legislature Allied employees on the account will be spending 90% of their time on this item and above 65% of all expenses". They recommended that the tax program should receive "much more emphasis than the trial or any other matter". (D-666 at 5686) [*Refused as stated*]

(4) *Efforts to Burden Railroad Operations.*

59c. PMTA has prepared, and is ready to introduce into the Pennsylvania legislature, bills designed to increase railroad costs by requiring the railroads to purchase new equipment, to build new structures, and to increase maintenance, and has prepared publicity to support them. Typical are bills to patrol tracks and remove snow and ice from rails, to keep down weeds on rights-of-way, and to construct footwalks on bridges crossing streams. (Counterclaimants' Requests 60c to 62c) [*Refused as stated*]

60c. Commencing in March of 1950, PMTA publicized train wrecks, railroads on public streets, and other "ways in which railroads annoy people", and prepared a "nuisance pamphlet" which included such additional subjects

as a list of diseases allegedly spread by railroads, and railroads' alleged contribution to stream pollution. PMTA also instigated complaints to the Pennsylvania Public Utility Commission concerning railroad grade crossings and grade crossing accidents. (D-589 at 5496; D-590 at 5497; D-591 at 5499; D-592 at 5500; D-593 at 5501; D-594 at 5502; D-595 at 5503; D-596 at 5504; D-597 at 5505; D-598 at 5505; D-599 at 5506; D-600 at 5507; D-602 at 5509; D-603 at 5510; D-604 at 5511; D-609 at 5517; D-610 at 5519; D-16 at 5528; D-658 at 5670) [*Refused as stated*]

61c. PMTA prepared, for introduction into the Pennsylvania legislature, bills requiring the railroads to pay taxes on overhead structures; to floodlight grade crossings; to pave walkways at railroad stations; to discontinue use of wooden railroad coaches and cabooses; to maintain passenger shelters at stations; to equip trainmen with electric lanterns; to inspect bridges and maintain watchmen thereon; to erect footwalks on trestles; to inspect toilet facilities in passenger stations; to construct footwalks on bridges crossing streams; to patrol tracks and remove snow and ice from rails; to keep down weeds on rights-of-way; to file annual reports on free transportation; to maintain automatic gates or watchmen at all grade crossings; and to maintain night reflector signs at approaches to all grade crossings. (D-612 at 5523; D-614 at 5525; D-611 at 5521; D-609 at 5517; D-231 at 4217) PMTA presently holds drafts of these bills and is ready to introduce them into the Pennsylvania legislature at some suitable time. (Gogolin, 5689, 5690) [*Refused as stated*]

62c. PMTA considered the introduction of legislation imposing personal property taxes upon railroad cars and eliminating failure to stop, look and listen as a defense in railroad crossing accident cases. (D-613 at 5524; D-615 at 5527) [*Refused as stated*]

(5) *Opposition to Recommendations of the Weeks' Report.*

63c. PMTA, through its membership in ATA, is opposing greater freedom of rate adjustment for the railroads, as embodied in the Weeks' Report and the legislation implementing it. (Counterclaimants' Requests 64c to 66c [*Refused as stated*]

64c. The recommendations of the Report dated April 15, 1955, prepared by the Presidential Advisory Committee on Transportation Policy and Organization (Weeks' Report) would relieve the railroad industry as common carriers from burdensome regulations and restrictions and would allow the railroads greater freedom to utilize their economic capabilities in the pricing of their transportation service. (D-669) [*Refused as stated*]

65c. The railroads of the United States, including counterclaimants, have actively supported the principal recommendations of the Weeks' Report and Federal legislation introduced to implement it. (5702-5707) [*Refused as stated*]

66c. Since the Spring of 1955, the trucking industry, under the leadership of ATA, of which plaintiff PMTA is a member, has undertaken to raise a "Survival Fund" of one million dollars, and is actively campaigning against the recommendations of, and legislation designed to implement, the Weeks' Report. (Lawrence, 5692-5701) [*Refused as stated*]

(6) *This Lawsuit.*

67c. The present action was conceived, instituted, and financed by PMTA as a major part of its public relations program. The suit was designed as a lever to eliminate railroad opposition to PMTA's truck weight bills. It has been used as an instrument for the dissemination of false publicity, including false charges of bribery, to further the

passage of PMTA's truck weight bills by discrediting the railroads and the other opponents of those bills, and to attack the integrity and objectivity of the Maryland Road Test. (Counterclaimants' Requests 68c to 76c; see also. Counterclaimants' Requests 50c and 88c) [*Denied*]

68c. Timed to coincide with the opening of the Pennsylvania legislature, this suit was instituted in January, 1953. [*Denied*]

69c. This suit, conceived as a public relations venture, has been financed out of PMTA's public relations funds. (D-566E at 5374; D-566F at 5375; D-560 at 5358; D-561 at 5360) [*Denied*]

70c. Of the public relations money spent by PMTA in 1952 and 1953, 21.65% was spent on this lawsuit; 9.25% was spent on PMTA's campaign to impose taxes on railroads; 8.51% was spent on investigations relating to the Maryland Road Test, railroad nuisances, hidden opposition to trucking, and U. S. Bureau of Public Roads; and only 2.59% was spent on "good will for trucking industry". (D-575 at 5430) [*Refused as stated*]

71c. Plaintiffs, in their Complaint and in their answers to interrogatories (Court Papers Nos. 191, 544), charged, among other things, that the railroads carried out their alleged campaign through the bribery and corruption of public officials and officials of independent organizations. These charges were false, and no evidence was produced by plaintiffs at the trial to support them. (See 2718) [*Refused as stated*]

72c. In February, 1953, after commencement of this suit, PMTA wrote letters to 70 of the biggest out-of-state motor carriers, calling on them for help "in alerting the press to watch for the headline news developments now unfolding in the trucking industry's $250,000,000 anti-trust suit against the railroads". (D-576 at 5477; also D-577 at 5480; D-578 at 5481) [*Affirmed*]

73c. In publicizing this lawsuit PMTA and Allied arranged for the issuance of a weekly trial report to PMTA members, and to trade and business magazines, and issued news releases concerning pre-trial depositions in this action. (D-580 at 5484; D-582 at 5486) [*Affirmed*]

74c. Allied sent telegrams to New York newspapers and wire services calling attention to depositions to be taken in this action, and used advertising pressure upon newspapers as a lever to obtain press coverage of depositions. (D-581 at 5485; D-581 at 5273) [*Refused as stated*]

75c. PMTA prepared and issued special editions of "Penntrux" and a brochure entitled "The Road Ahead", which reported on deposition testimony and documents. (D-583; D-584; D-89) [*Affirmed*]

76c. In May, 1953, PMTA printed and distributed 10,250 copies of "affidavit contra defendants' motions to dismiss for failure to state a claim on which relief can be granted", previously filed by plaintiffs in this proceeding in mimeographed form (Court Paper No. 200), and its public relations counsel proposed the distribution of an additional 30,000 copies (D-585 to D-588 at 5488-5494). [*Affirmed*]

IV. THIRD PARTY AND OTHER PUBLIC RELATIONS TECHNIQUES USED BY PLAINTIFFS.

A. Technique of Indirection.

77c. In pursuing its public relations campaign, PMTA endeavored to distract attention from consideration of its legislative program on the merits, by avoiding public hearings (D-264 at 4318, D-127 at 3861), by discrediting all "past and pending" road tests (D-494 at 5119), by avoiding frank and accurate discussion with the press, unless absolutely required (D-501 at 5206-5207), and by attacking all those who opposed its program in order to discredit

them rather than to meet their arguments (Counterclaimants' Requests 45c to 50c and 67c to 76c). [*Denied*]

B. Use of Labor Groups.

78c. Commencing in 1948, in order to advance its legislative objectives PMTA attempted to gain labor union support or neutralize labor union opposition through the following techniques.

(a) Concerted efforts to persuade union leaders;

(b) Paid advertising in union periodicals in exchange for the publication of material prepared by PMTA;

(c) Free publicity for friendly union leaders;

(d) Intra-union pressure upon uncooperative union leaders;

(e) Paid employment of an Ohio lobbyist and labor leader to make contact with labor unions;

(f) Dissemination to union leaders of false material concerning railroads; and

(g) Payment for entertainment and hotel rooms for union leaders from whom favors were sought. (Counterclaimants' Requests 80c to 94c) [*Refused as stated*]

79c. Through these techniques PMTA obtained labor support for its legislative program from the Teamsters, United Mine Workers, United Rubber Workers and United Steelworkers. When such support had been secured, it was PMTA's practice to "initiate the ideas", to compose and distribute telegrams, resolutions, and other printed matter attributed to the unions or their leaders, and to cause union leaders to make statements supporting PMTA's program to legislators and other influential persons, without disclosing that such telegrams, resolutions and statements had been composed or secured by PMTA. (Counterclaimants' Requests 80c to 94c) [*Refused as stated*]

(1) *AFL and Teamsters.*

80c. Commencing in 1948, PMTA actively solicited and received legislative and public relations support from local Teamsters unions in Pennsylvania. (D-358; 4607). In this collaboration it was PMTA's function to "initiate the ideas". (D-359 at 4609) [*Refused as stated*]

81c. PMTA paid $1,500 to the Pennsylvania State AFL publication, *Pennsylvania Federationist*, for a two-page advertisement, on the understanding that the editors would consider publication of an article by Crossett, a truck operator and officer of PMTA. (4607-4608) [*Refused as stated*]

82c. In the Autumn of 1952, the convention of International Brotherhood of Teamsters at Los Angeles adopted a resolution denouncing so-called "Hitlerian" actions of the railroads and demanding a Congressional investigation thereof. This resolution was prepared by, but not attributed to, Allied Associates and was promoted through Teamster President Dave Beck by Charnay and Bildersee, Allied executives who attended the convention at PMTA's expense. (D-360 to D-362 at 4611-4614) Shortly after the convention, Allied placed publicity about Beck in *Newsweek:* (D-363 at 4616) [*Affirmed*]

83c. Allied promoted national press and wire service coverage of the International Teamsters resolution without disclosing PMTA's role in its preparation and adoption. (D-361 and D-362 at 4611-4614) [*Affirmed*]

84c. In February, 1953, Charnay spent hundreds of dollars entertaining International Teamsters leaders in Miami; a few months thereafter, Allied prepared a telegram which was sent over Dave Beck's signature to AFL President George Meany and other labor leaders denouncing the railroads and urging labor support for the current big truck bill in the Pennsylvania legislature. The telegram

was attributed neither to Allied nor to PMTA." (D-364 to D-366 at 4617-4621). [*Affirmed*]

85c. PMTA solicited legislative support from the International Teamsters leaders at the Miami meetings because the Teamsters had political influence in Pennsylvania in addition to that which the truckers had. (Gormley, 4622-4627) [*Affirmed*]

(2) *UMW.*

86c. In 1951 and thereafter, PMTA actively solicited and received legislative and public relations support from the United Mine Workers largely through the activities of Ted Rodgers, Sr., a member of the PMTA Public Relations Policy Committee. (Rodgers, 4640-4647; D-367) [*Affirmed*]

87c. On behalf of PMTA, Rodgers solicited UMW official Tom Kennedy to make contact with Pennsylvania legislators in support of PMTA's 1953 truck weight bill without disclosure of the solicitation, and also succeeded in getting Kennedy to "straighten out" a local UMW leader who had spoken against the truckers' interests. (Rodgers, 4640-4647; D-367) [*Affirmed*]

88c. Charnay also sought to gain Kennedy's support for PMTA's 1953 truck weight bill, by sending him a memorandum falsely charging that the Maryland Road Test was a "propaganda stunt"; that many Pennsylvania organizations opposing the 1951 big truck bill had been "infiltrated, perverted and corrupted" by railroad agents; and that Allied and/or PMTA could prove "bribery" in connection with "at least three" such organizations, including the Grange and Township Supervisors. (D-91 at 4651-4655; see Counterclaimants' Request 50c(*d*) at p. 110) [*Denied*]

89c. Kennedy's aid in the Pennsylvania legislature was sought because PMTA considered it would "do some good" to have him "go to bat" for the truckers. (Rodgers, 4640, 4645) [*Affirmed*]

(3) *CIO.*

90c. To obtain CIO support for SB 615, PMTA brought into Pennsylvania Frank H. Brown, a labor lobbyist and United Rubber Workers (CIO) leader from Ohio. Brown's services were paid for by Owen Orr, an Akron trucker. Brown obtained telegrams supporting SB 615 from the International officers of his union and the leaders of Pennsylvania locals. He also had Robert Garber, a Pennsylvania local Rubber Workers leader, send telegrams to several legislators urging passage of SB 615. None of these telegrams disclosed Brown's participation. (D-370 to D-373; Brown, 4678-4691) [*Affirmed*]

91c. In 1952 and 1953, Harry Boyer head of the Pennsylvania CIO, strongly opposed legislation to increase truck weights. To overcome this opposition PMTA believed it would be necessary either "to split" the CIO or "to bring pressure to bear from higher up". (D-374 at 4691) [*Affirmed*]

92c. In 1953, Brown, who again was brought from Ohio and paid by PMTA, made contact with local union leaders throughout Pennsylvania, and expanded his activities beyond his own union to include contacts with local leaders of the steelworkers union. In addition, Allied obtained support from United Steelworkers President David McDonald. (Brown, 4708; D-377 and D-378, Brown, 4703; D-381 to D-384 at 4714, 4721-4723; D-392 at 4747) [*Affirmed*]

93c. Brown sought support for the truck bill from a number of union locals to "neutralize" Boyer's opposition. Robertson Cameron, PMTA public relations director, prepared a form of resolution supporting PMTA's bill for use by union locals. The resolution did not disclose PMTA's participation in its preparation and adoption. (D-375 at 4695; Brown, 4725-4726; D-387 at 4742) [*Affirmed*]

94c. Brown endeavored to obtain passage of a resolution supporting increased truck weights at the Pennsylvania CIO convention in 1953, and in that connection PMTA reserved a suite of rooms at the Bellevue-Stratford for the officers of the Pottstown local who were committed to PMTA to sponsor the pro-truck resolution. (Brown, 4734-4746; D-385 to D-390) [*Affirmed*]

C. Use of Agricultural Groups.

95c. Commencing in 1949, in order to achieve its legislative objectives, PMTA attempted to gain and use farm group support, or neutralize farm group opposition, from the Pennsylvania Cooperative Potato Growers, Inc., Pennsylvania Farm Bureau Federation, Pennsylvania Young Farmers, Farmers Union, and the Pennsylvania State Grange, through the following techniques:

(a) Applying "pressure" by one farm group upon another to overcome opposition;

(b) "Infiltrating" agricultural groups;

(c) Organizing personal contacts with farm group officials;

(d) Promoting Grange support through concealed use of friendly Grangers, including a trucking company employee;

(e) Organizing publicity and directing a floor fight at the Grange convention in 1952;

(f) Preparing and placing editorial columns and letters to newspapers for publication without disclosure of their source;

(g) Preparing resolutions and news releases for issuance by farm groups without disclosure of PMTA's authorship; and

(h) Paying $1,000 to a farm group which had cooperated with the PMTA program. (Counterclaimants' Requests 96c to 104c) [*Refused as stated*]

(1) *Pennsylvania State Grange.*

96c. In 1950, PMTA attempted to gain support for its legislative program from the Pennsylvania State Grange through "pressure" by the New Jersey Grange which had been arranged by the New Jersey Motor Truck Association. (D-394 at 4790-4794) [*Affirmed*]

97c. In June, 1951, PMTA decided that the way to "attack this Grange opposition [was] to infiltrate the agricultural organizations themselves." It took steps in this direction through various suppliers, such as the oil companies and International Harvester. Frequent contacts were also made with Grange Secretary Joab K. Mahood in an effort to overcome Grange opposition. (D-395 to D-397 at 4794-4798) [*Affirmed*]

98c. PMTA supplied its material to Reba Burroughs, a trucking Company employee, for use in a presentation she was to make at a Grange meeting in Harrisburg in October 1952. To keep its connection with Reba Burroughs clandestine, PMTA asked her to "find some way of contacting us without jeopardizing your position." (D-399 at 4803-4804) [*Affirmed*]

99c. PMTA made a concerted effort to influence action regarding truck weight legislation at the Grange convention in October 1952 by "mustering of friendly Grangers" through direct contacts, through other farm groups and friendly legislators, and through a private meeting with the new Grange Secretary, J. Collins McSparran, all of which was done prior to the convention. John Deitrick, an Allied employee, was on hand at the opening of the convention in Allentown (registered at his hotel "under his own name" as he advised his superior). He had five key Grangers, including Reba Burroughs, operating inside the convention to advance PMTA's cause; he directed a variety of trucker-inspired publicity at the delegates; he engineered a "vigorous and brilliantly directed floor fight" which brought about

adoption of a resolution acceptable to the truckers. Despite these efforts the Grange ultimately reaffirmed its opposition to higher truck weights. (D-400 *to* D-404 at 4805-4816; D-399 at 4804) [*Affirmed*]

100c. Notwithstanding its final setback at the 1952 Grange convention, PMTA sought to capitalize on its efforts there by publicizing a so-called "split" in the Grange. For this purpose, PMTA prepared and procured the publication of news columns in the Harrisburg *Patriot* and Williamsport *Grit* which did not disclose their true authorship. It then caused reprints of the *Patriot's* story to be "put in plain envelopes and * * * taken to another community and dropped in mail." PMTA also drafted a letter to the editor of the *Patriot* and requested a Grange member to mail it over his own signature, without attribution to PMTA. (D-405 to D-407 at 4816-4829; D-645 at 5628-5629) [*Affirmed*]

(2) *Pennsylvania Cooperative Potato Growers, Inc.*

101c. In 1949, Pennsylvania Cooperative Potato Growers, Inc., adopted a resolution favoring higher permissible truck weights. PMTA tried "to get similar endorsements from other groups" and urged its local officers to obtain such endorsements from other "influence groups" which would be helpful in the legislative fight. (D-408 at 4820) [*Affirmed*]

102c. In 1951, the Potato Growers contacted legislators at PMTA's request and issued a letter and news release endorsing SB 615 which were prepared by, but not attributed to, PMTA. (D-409 to D-412 at 4822-4830) [*Affirmed*]

103c. In 1952, PMTA paid $1,000 to the Potato Growers for what the truckers described as "fine work in support of agriculture and public progress." (D-413 at 4830) [*Refused as stated*]

(3) *Other Farm Groups.*

104c. In 1949, PMTA endeavored to obtain endorsement of its legislative program by the Lehigh County Farm Bureau. PMTA files for the same year contain a news release favoring PMTA's truck weight bill, attributed to Farm Bureau Federation, with which PMTA maintained "excellent relations". Friendly relations were also maintained with the Pennsylvania Young Farmers and the Farmers Union. (D-414 to D-417 at 4832-4838) [*Affirmed*]

D. Use of Groups of Local Government Officials.

105c. Since at least 1947, in order to achieve its legislative objectives, PMTA has attempted to gain and use support, or neutralize opposition, from groups of local government officials throughout the state, by employing the following techniques:

(a) Using official positions held by truck operators to influence official group action;

(b) Promoting, within official groups, factions favorable to PMTA's program;

(c) Using cooperative state legislators to influence local government officials;

(d) Enlisting delegates, and directing their actions, to influence official group conventions;

(e) Inducing the president of a group of municipal officials to write the Governor and legislators in support of SB 615 and attempting to publicize his support in a release prepared by PMTA but attributed to him, despite the fact that his organization had voted overwhelmingly to oppose the bill. (Counterclaimant's Requests 106c to 116c) [*Refused as stated*]

(1) *Second Class Township Supervisors Association.*

106c. PMTA made a concerted effort involving "considerable preparation" to influence the 1950 convention

the Second Class Township Supervisors Association in its action regarding truck weight limits, by promoting in every county contacts between PMTA members and delegates to the convention. (D-448 at 5043-5049; D-449 at 5051). [*Affirmed*]

107c. PMTA attempted to promote its own interests within the Second Class Township Supervisors Association by an alliance with Thomas Stephenson, a member of the Association who was interested in the Home Rule movement. In return for Stephenson's support for the truckers, PMTA urged its contacts within the Association to support Stephenson's Home Rule program. (D-448 at 5043-5049) In 1951, PMTA maintained Stephenson's good will by a promise of PMTA advertising in his publi tion and in 1952 Cameron contemplated further "use" of Stephenson. (D-449 at 5051; D-450) [*Affirmed*]

(2) *Pennsylvania Borough and Boroughs Association.*

108c. Before and during the 1951 legislative session, PMTA asked Mayor M. A. Shoffner, of Parker, Pennsylvania, who had aided PMTA in 1947, and W. F. Crossett, a truck operator and official of Warren, Pennsylvania, to:

(*a*) investigate actions of their delegates regarding a resolution passed by the Boroughs Association opposing truck weight increases; and

(*b*) obtain, through "a little footwork", the passage of resolutions favoring SB 615 by their Borough Councils. (D-454 and D-455 at 5057; D-460 at 5062; D-452 at 5055) [*Affirmed*]

109c. In 1950 and 1951, PMTA attempted to influence the action of the Boroughs Association by recruiting advance support among delegates, "to prevent any unfavorable resolutions from passing the Association's convention". (D-453 at 5056; D-456 at 5058) [*Affirmed*]

110c. Also in 1951, PMTA attempted to influence borough officials at the local level by direct individual contacts and the formation of a local committee for this purpose. One truck operator whose borough council passed a resolution favoring SB 615 was congratulated by PMTA for "a real accomplishment". (D-457 to D-459 at 5059-5061) [*Affirmed*]

111c. In 1953, PMTA again sought the support of borough officials for its legislative program through the distribution of a circular letter. (D-461 at 5063) [*Affirmed*]

(3) *First-Class Township Commissioners Association.*

112c. In 1951, David M. Brickley, President of the Association of First Class Township Commissioners, was induced by PMTA to write legislators and the Governor in support of SB 615, notwithstanding the fact that the Association had voted overwhelmingly in opposition to the bill. (D-466 at 5069; D-463 at 5065; D-462 at 5064) [*Affirmed*]

113c. Shortly thereafter, Cameron prepared a news release announcing Brickley's support of SB 615 and mailed it to Brickley with the request that he give it to the newspapers. Although the release did not indicate that PMTA prepared it, Cameron told Brickley that he would be "entirely justified" in issuing it as his own. (D-464 at 5066) [*Affirmed*]

114c. When Brickley expressed reluctance about issuing PMTA's news release as his own, Cameron asked State Representative Edwin M. Ewing to prevail upon Brickley to issue the release, at least to local papers, so that Cameron or Ewing could obtain general wire service coverage if Brickley was unwilling to do so. (D-465 at 5067) [*Affirmed*]

115c. In 1952 and 1953, PMTA again tried to "line up" support of the First Class Township Commissioners through State Senator G. Robert Watkins of Delaware

County and G. A. Schwab of Atlantic Refining Company. Schwab, a township commissioner and PMTA chapter officer, had conducted a floor fight against the resolution opposing SB 615 adopted at the Commissioners' 1951 convention. (D-462 at 5064; D-467 and D-468 at 5070-5073; D-148A) [*Affirmed*]

(4) *State Association of County Commissioners and League of Third Class Cities.*

116c. In 1952, PMTA promoted direct personal contacts with officials of the State Association of County Commissioners and the League of Third Class Cities, in order to influence these groups to support the truckers' legislative program. (D-469 to D-471 at 5074-5077) [*Affirmed*]

E. Use of Civic and Other Groups.

117c. Commencing in 1947, PMTA used the memberships of truck operators and their families in motor clubs and other civic groups to obtain the support or appearance of support of such groups for PMTA's legislative program. (Counterclaimants' Requests 118c to 126c) [*Affirmed*]

(1) *Motor Clubs:*

118c. Prior to March, 1948, PMTA encouraged its members to participate in and become active as officers of motor clubs so that the alleged "true story" of highway transportation would reach all highway users, and thereafter urged its members to complain to their motor club officials about the clubs' opposition to PMTA bills. (D-472 to D-474 at 5078-5083; D-476 and D-477 at 5085-5088) [*Affirmed*]

119c. In 1953, Allied studied additional ways to counteract Keystone Automobile Club's opposition to PMTA legislation, and to "checkmate" other Keystone projects such as seeking reform of truck operation and curbing flagrant speed violations. (D-475 at 5083) [*Affirmed*]

120c. In 1953, PMTA suggested joint action with Pennsylvania Motor Federation to study the alleged railroad crossing "hazard". (D-478 at 5089) [*Affirmed*]

(2) *Women's Clubs.*

121c. In 1951, William Ward, a PMTA member, gave members of the Altoona Federation of Women's Clubs PMTA's version of the "correct story" about SB 615, in the hope of promoting a resolution favorable to the bill. (D-479 at 5091) [*Affirmed*]

122c. PMTA enlisted Mrs. Harry Gormley and Mrs. Jess Pusey, wives of PMTA members, to "further educate" the state leadership of the Federation of Women's Clubs to bring about a change in that group's opposition to SB 615. (D-480 to D-482 at 5093-5097) [*Affirmed*]

(3) *Chambers of Commerce and Other Groups.*

123c. In 1949, PMTA solicited legislative support from officials of the Philadelphia Safety Council and the Altoona Chamber of Commerce. The Secretary of the Altoona Chamber thereafter wrote to Senator John Snowden endorsing HB 560, but he did not disclose his solicitation by PMTA. (D-483 to D-485 at 5097-5099) [*Affirmed*]

124c. Ward, who was active in the Altoona Chamber of Commerce, on two occasions procured letters to Governor Fine signed by the Secretary of the Altoona Chamber endorsing SB 615. (D-485 and D-486 at 5099-5105) [*Affirmed*]

125c. Gogolin asked Ted Rodgers, Sr., whether someone with the Scranton Chamber of Commerce could write a letter to Governor Fine supporting SB 615, as if this was the official position of the Scranton group. Rodgers procured such a letter, signed by the Secretary of the Scranton Chamber, and forwarded a copy to Gogolin with instructions to "read and destroy". (D-485 at 5099) [*Affirmed*]

126c. In November, 1952, PMTA tried to influence the State Chamber of Commerce by obtaining a resolution endorsing greater truck weights from the Chamber's Transportation Committee, of which Gogolin was a member. This was to be done by organizing friendly members of the Committee in advance of a scheduled full meeting. (D-487 at 5105) [*Affirmed*]

F. Pennsylvania Motor Safety League.

127c. PMTA carefully concealed that Pennsylvania Motor Safety League was its creature, conceived, formed, financed and promoted by PMTA for the advancement of its legislative and public relations program. PMTA created PMSL to provide for itself a vocal group nominally devoted to highway safety, but in fact designed to obtain improved highways for truck operations, to issue publicity harmful to the railroads and to establish favorable relationships for the trucking industry with other organized groups. Despite the substantial amounts expended in its promotion, PMSL never became active in the public relations field primarily because this lawsuit was filed before its organization was completed. (Counterclaimants' Requests 128c to 138c) [*Refused as stated*]

128c. Pennsylvania Motor Safety League (PMSL) was incorporated in Delaware on August 1, 1952, by PMTA's general counsel. (D-424, Murdoch, 4941) In November, 1952, final plans for activation of PMSL was formulated at a meeting in New York, attended by representatives of PMTA and Allied, including John Murdoch, who was employed as executive secretary of PMSL. (Murdoch, 4849, 4859-4862) [*Refused as stated*]

129c. PMTA and Allied contemplated that:

(*a*) The "bond" between PMTA and PMSL was to be concealed except possibly from PMTA personnel;

(*b*) PMSL was to be used to achieve working relationships between PMTA and other groups, including farm groups and motor clubs;

(*c*) PMSL was to become a vehicle for promoting highway improvements; and

(*d*) PMSL would be used to harass the railroads, particularly in connection with the railroads' "retrenchment trend". (D-418 and D-419; D-422 at 4923) [*Refused as stated*]

130c. To avoid any "apparent connection" between his operations and PMTA, Murdoch was placed on the Allied payroll (Murdoch, 4853); he was instructed to pay PMSL expenses by cashing Allied checks at a bank and depositing the proceeds in his personal account at another bank (D-423, Murdoch, 4938-4940; D-425 to D-429, Murdoch, 4944-4952); and he was also instructed not to be seen with PMTA personnel (Murdoch, 4854-4856). [*Refused as stated*]

131c. Murdoch was told not to explain to the public PMTA's role in organizing and financing PMSL. (Murdoch, 4882) He knew that PMSL, in addition to its nominal purpose of promoting highway safety, was to be used in PMTA's campaign to improve highways for truck operations and that this must be concealed since it might discourage prospective members. (Murdoch, 4919-4921) [*Refused as stated*]

132c. In November, 1952, PMTA selected as prospective directors of PMSL William S. Yard, Esq., of Washington, Pennsylvania, John L. Tivney, a Harrisburg insurance man, and Judge Paul Lehman of Lewistown. (Murdoch, 4900-4914) Cameron had previously represented to Judge Lehman that PMSL was to be "completely divorced" from PMTA. (D-421 at 4906) [*Refused as stated*]

133c. On November 28, 1952, Tivney expressed concern to Murdoch that it would be impossible to "conceal from the opposition the true facts concerning the organization".

specifically the true role of PMTA and Allied in creating PMSL, the use of dummy incorporators, and the long delay following incorporation of the League. (Murdoch, 4983, 4991-4993, D-432 at 4975) [*Refused as stated*]

134c. Because of Tivney's misgivings, Murdoch recommended a "very tight plan" to foreclose discussion of PMSL's "true history" at the proposed organizational meeting, the recruitment of additional organizations as sponsors, and the public announcement of PMTA's part in founding PMSL. (D-431, D-431A, D-432; Murdoch, 4998-4999) Nonetheless, in his dealings with others, Murdoch continued to conceal PMTA's interest in PMSL. The invitations to the organizational meeting, which he drafted for Tivney's signature, stated that the meeting was the result of "several persons approaching the problem (of highway safety) individually". (D-436 to D-438; Murdoch, 5005-5012) In soliciting the support of civic leaders, he concealed that PMSL was a creature of PMTA and Allied. (Murdoch, 5013-5018; Murdoch, 5020-5023) [*Refused as stated*]

135c. In January, 1953, Tivney told Murdoch that PMSL was "right now, a losing venture" because the prospective members who were supposedly "in the bag" had not in fact been "sold" or "delivered". A re-examination of PMTA's plans for PMSL was in order because "these men can't be fooled". (D-440 at 5020) [*Refused as stated*]

136c. On January 26, 1953, Murdoch conferred with Bilderseeand Gogolin about problems arising from PMTA's approach to the new highway safety group, including the fact that the big men with whom Murdoch was dealing would not "be fooled" or "subscribe to a dummy set up". Murdoch believed that PMTA should not try to "ring in big, independent men to support a front outfit". (D-441, Murdoch, 4925-4930) [*Refused as stated*]

137c. After commencement of this lawsuit in January, 1953, Murdoch was directed to organize a new and "bona

fide" organization, because PMSL "might not have appeared" to be bona fide. (Murdoch, 4931-4936) In this manner PMTA sought to avoid the same criticism which it made of "the opposition, for setting up 'phony' organizations". (D-447 at 5042) [*Refused as stated*]

138c. After the abandonment of PMSL, PMTA agents approached Professor D. A. Weaver, of Pennsylvania State College, to become head of a new group called Citizens Committee for Highway Safety. Weaver was not told of PMTA's role in the organization of CCHS. (Murdoch, 4955-4959, 5025-5026) [*Refused as stated*]

G. Newspapers and Magazines.

139c. Commencing as early as 1949 PMTA enlisted press support for its program by:

(a) "Planting" letters to editors from persons not connected with the trucking industry;

(b) Maintaining personal contacts with editors in order to place PMTA material "without attribution";

(c) Using advertising pressure as a lever for favorable press treatment;

(d) Using free-lance writers and columnists to publish its material over their names;

(e) Obtaining publication of articles in national magazines; and

(f) Employing news syndicates to disseminate PMTA material which concealed its authorship. (Counterclaimants' Requests 140c to 145c) [*Denied*]

140c. Since as early as 1949 PMTA has had letters addressed to newspaper editors advocating PMTA's legislative program which were "planted" (D-496E at 5170), either under the name of local truck operators or by persons "not connected with the trucking industry" (D-496E at 5173), in a deliberate effort to conceal the participation

of PMTA in preparing and placing such letters. (D-496A to D-496V at 5166-5199) [*Denied*]

141c. PMTA has promoted and maintained close contacts with Pennsylvania newspaper editors to secure editorial support for the truckers' legislative program, and PMTA's representatives and allies personally approached "the publisher, or at least the editor, of every major newspaper in the State". (D-507 at 5222; D-498 to D-506 at 5201 at 5218) In a deliberate effort to avoid public disclosure of its participation in the preparation or organization of editorials, PMTA suggested the publication of editorial material "without attributing it to us", since "it would be much stronger that way". (D-508 at 5225) Ultimately PMTA published a brochure entitled "Pennsylvania Newspaper Support of the Fair Truck Bill SB 615", containing editorals from friendly Pennsylvania newspapers. (D-533 at 5277) [*Denied*]

142c. PMTA urged its members, ATA, and other truckers' groups, to place truck advertising in Pennsylvania publications which carried material considered "helpful" or "consistently favorable" to the trucking industry, and encouraged truck suppliers to use their national advertising space for the same purposes. (D-528 to D-530 at 5267-5273; D-532 at 5274) [*Affirmed*]

143c. PMTA prepared and supplied material in support of its legislative program to free-lance magazine writers and columnists for use in articles published under their own names. (D-498 at 5202; D-503 at 5214; D-511 at 5231-5232; D-513 at 5237; D-514 at 5241) all such attempts were subsequent to the railroad-Byoir antitruck campaign. [*Affirmed as modified*]

144c. PMTA's public relations personnel maintained personal contacts with national magazines, such as *Look* (D-512 at 5233; D-514 at 5241), *Saturday Evening Post* (D-516 at 5247; D-519 at 5252; D-521 at 5254), and *Fortune*

(D-521 at 5254), and prepared articles and material which they "peddled" for publication in national magazines. (D-509 at 5227; D-513 at 5237; D-515 at 5243) [*Affirmed*]

145c. PMTA paid Derus Associates, a Chicago news syndicate, and National Industries News Service, a Washington, D. C., syndicate, to distribute to Pennsylvania publications articles to promote the truckers' legislative program without disclosing PMTA's authorship. (D-522 to D-525 at 5255-5258; D-527 at 5262) [*Affirmed*]

H. Professor John S. Worley:

146c. To advance its legislative program, PMTA retained John S. Worley, Professor Emeritus of Civil Engineering at the University of Michigan. PMTA, without disclosing its retention of Worley, used articles published by him which minimized the effect of heavy trucks on highways and cast suspicion on road tests. Statements to the same effect were prepared by Worley for PMTA's use at legislative hearings, one of which was presented to Governor Fine. (Counterclaimants' Requests 147c to 151c) [*Affirmed*]

147c. In early 1951, PMTA retained John S. Worley, Professor Emeritus of Civil Engineering at the University of Michigan, at $100 per month, to advance PMTA's legislative program. (D-492 at 5215; D-488 at 5108) [*Affirmed*]

148c. In November, 1951 Worley published in the *American Mercury* an article entitled "In Defense of Trucks", which did not disclose that Worley was then on PMTA's payroll. ATA distributed Worley's article in reprints which indentified Worley as a leading highway authority but not as a PMTA employee. (D-489 at 5111-5112) [*Affirmed*]

149c. A statement by Worley in support of SB 615 was filed at Governor Fine's hearing by PMTA's counsel, who

identified Worley as a leading expert but not as a PMTA employee. Worley's statement did not disclose his connection with PMTA. (3717; D-490 at 5113; D-491 at 5114) [*Affirmed*]

150c. PMTA sought to use writings by Worley which did not "bear the seal and stamp of" PMTA to "win over a prominent member of the State Grange" (D-493 at 5117), and to bring about publication in *Engineering News-Record* of a story "which would convey general suspicion as to all past ...d pending road tests". (D-494 at 5119) This attempt to secure criticism of road tests occurred after the Byoir connection with the Maryland Road Test and the antitruck campaigns in Ohio and Pennsylvania on behalf of the railroads by Byoir had been revealed to the truckers. [*Affirmed as modified*]

151c. PMTA planned a hearing before the U. S. Senate Committee on Appropriations (the Bridges Committee) at which Worley would testify. (D-620 to D-622 at 5541-5554) Worley wished to be present "not as an employee" of PMTA "but as a professional consultant called in by Senator Bridges". (D-623 at 5554-5556) [*Affirmed*]

i. Governor Fine's Hearing on SB 615.

152c. PMTA organized and directed the presentation in support of SB 615 at Governor Fine's hearing by:

(a) Soliciting the appearance of at least thirty witnesses;

(b) Supplying air transportation for witnesses;

(c) Preparing seemingly independent statements and resolutions that were submitted by organizations not connected with the trucking industry;

(d) Preparing and issuing news releases covering statements made in support of the bill, and

(e) Soliciting letters and telegrams to be sent to Governor Fine in such a way as to disguise their PMTA origin and the real interest of the senders.

The presentation was so contrived that even PMTA's attorney who conducted the case in favor of the bill was not aware of the extent to which the witnesses had been mobilized by PMTA. PMTA regarded the presentation as a commendable job which made out a far better case for SB 615 than was offered against it. (Counterclaimants' Requests 153c to 162c) [*Affirmed*]

153c. On January 17, 1952, Governor John S. Fine held a hearing to determine whether he should sign or veto SB 615. (3544) [*Affirmed*]

154c. PMTA solicited the attendance of at least thirty persons or organizations who appeared at the hearing to support the bill. These included, among others, spokesmen from trade associations and from the food, chemical, oil, steel, glass, automotive and manufacturing industries, who were represented to the Governor as "a cross section of Pennsylvania". (D-144 at 3885; D-139 and D-140 at 3879-3880; D-157 at 3897-3898; D-147 at 3889; D-150A at 3892; D-155 at 3896; D-159 at 3901; D-165 at 3906; D-167 at 3907; D-169 at 3908; D-176 to D-194 at 3918-3928; 3764-3765) [*Affirmed*]

155c. PMTA prepared seemingly independent statements and resolutions that were submitted to the Governor by organizations such as Allegheny-Ludlum Steel Corporation and Oil Heat Association of Central Pennsylvania, Inc. (Compare D-145 and D-146 at 3886-3888a, with the transcript of hearing at 3659-3663; D-133 to D-135 at 3873-3875) [*Affirmed*]

156c. PMTA chartered an airplane to fly E. A. Cramlach, Vice President of the International Brotherhood of Teamsters, John B. Backus, President of Teamsters Joint Council 53, P. T. Sharpless, President of Sharpless Cor-

poration, and C. M. Kline, of Smith, Kline & French Laboratories, to the hearing." (D-138 at 3877-3878; 3685-3686) [*Affirmed*]

157c. PMTA prepared and issued news releases covering the statements submitted to the Governor by at least eleven organizations, including the Pennsylvania Potato Growers, Pennsylvania Young Farmers, Crown Can Company, Associated Pennsylvania Constructors, Bituminous Concrete Association, Harrisburg Steel Company, Brockway Glass Company, Inc., Pennsylvania Petroleum Association, and other representatives of Pennsylvania industry. (D-132 at 3872; D-149 at 3890; D-153 at 3894; D-154 at 3895; D-156 at 3896; D-158 at 3898; D-160 at 3901; D-162 at 3903; D-164 at 3904; D-166 at 3906; D-168 at 3908) [*Affirmed*]

158c. Before and after the hearing, PMTA solicited letters and telegrams to Governor Fine urging him to sign the bill. PMTA instructed its membership to disguise their real interest in the bill by writing the Governor as "motor club members" and "fair-minded citizens". PMTA requested the leaders of agricultural, construction, labor, and automotive groups to write in support of SB 615, and to encourage their membership to do likewise. (D-129 at 3864-3868; D-130 at 3869-3871; D-173 to D-175 at 3913-3917) [*Affirmed*]

159c. At the instigation of Frank H. Brown, then in the pay of PMTA, the international officers of United Rubber, Cork, Linoleum and Plastic Workers Union (CIO) sent telegrams to Governor Fine endorsing the bill and asking him to sign it. The telegrams did not disclose PMTA'S participation. (368"; D-143 at 3882-3884; Brown 4680-4682) [*Affirmed*]

160c. Even Bernard Segal, PMTA'S attorney at the hearing, was not aware of the extent to which PMTA had mobilized the persons and organizations appearing to support the bill. Segal represented to the Governor that

PMTA had asked "all members to refrain from coming to this meeting except a few official representatives", when, in fact, of the 85 persons representing 80 organizations who appeared to support the bill, 37 (not counting Segal) were themselves members of PMTA or represented organizations that were members. (3585; compare persons referred to at 3544-3769 with PMTA members identified in PMTA's Answer to The Pennsylvania Railroad Company's interrogatories 1(b) and 1(c) at 3954) [*Refused as stated*]

161c. Apparently Segal did not know that PMTA had solicited the attendance of a large number of persons appearing at the hearing, prepared resolutions or statements for them, and prepared and issued news releases covering their statements, for he represented to the Governor that "most of the people who appeared here today appeared here without my knowledge—I never heard of them—and without the knowledge of the [Pennsylvania Motor Truck] Association". (3764) [*Refused as stated*]

162c. PMTA, at the conclusion of the hearing, found that it had done "a commendable job" (D-175 at 3917), that it had "scored well ahead of the opposition" (D-170 at 3909), and that "a far better case was made out for SB 615 than was made out against the Fair Truck Bill" (D-171 at 3910-3911). [*Affirmed*]

V. PURPOSE AND INTENT

163c. Since at least 1949, during a period when motor carriers were making substantial inroads into, and railroads were obtaining a steadily declining share of, the long distance freight hauling business available in Eastern Territory, plaintiffs combined and conspired through PMTA to secure legislation or governmental action which would increase the counterclaimants' costs and would decrease plaintiffs' costs by expanding their use of public facilities; and to prevent the passage of legislation which would increase their fees or taxes for the use of such pu-

facilities. Thus, as the necessary consequence of their acts, plaintiffs intended to restrain competition between themselves and counterclaimants; to divert profitable long haul freight business from counterclaimants to themselves; to deprive counterclaimants of profits; to drive counterclaimants out of the business of the long distance hauling of freight; and to acquire for themselves a monopoly position, free from counterclaimants' competition, in the long distance hauling of freight. [*Denied*]

VI. EFFECTS OF PLAINTIFFS' CONSPIRACY.

A. Public Injury.

164c. As a result of plaintiffs' combination and conspiracy, costs in the long haul freight business have been distorted and freight rates, in turn, have been correspondingly distorted. In consequence, competitive relationships in the transportation industry have been disturbed, the relative economy and inherent advantages of alternative modes of transportation have not been maintained, and uneconomical allocations of capital have been encouraged, with the net result that overall costs of transportation to the public have been increased and the strength of the railroads as a vital part of our national defense has been impaired. [*Denied*]

165c. As a further result of plaintiffs' combination and conspiracy, substantial volumes of freight have been diverted from the railroads, including counterclaimants, to trucks, including those operated by plaintiffs. Thus the public has been deprived of the lower transportation charges which result from the railroads' ability to transport increased tonnage without comparable increase in costs. (Mackie, 1441; P-203 at 1738-1739) [*Denied*]

B. Private Injury.

166c. Substantial traffic and profits have been diverted from counterclaimants to plaintiffs as a result of plaintiffs'

combination and conspiracy, which has furthered the artificial rate disadvantage at which counterclaimants have been forced to operate in competing with plaintiffs for the long-haul freight business, (*a*) by hindering counterclaimants in exercising freedom of rate adjustment to reflect their true economies of operation, (*b*) by enabling plaintiffs to continue to charge rates reflecting the cost advantage of operating on rights-of-way maintained at public expense, and (*c*) by increasing counterclaimants' unit costs by precluding them from transporting increased tonnage; and which has increased counterclaimants' costs by forcing them to expend substantial sums of money in resisting the combination and conspiracy. [*Denied*]

C. Threatened Injury.

167c. Plaintiffs' combination and conspiracy, and its effects on the public and counterclaimants, are continuing. [*Denied*]

DEFENDANTS' REQUESTED CONCLUSIONS OF LAW—COUNTERCLAIM.

Ic. The Court has jurisdiction of the parties and of the subject matter of the action. [*Affirmed*]

IIc. Plaintiffs have combined and conspired to restrain unreasonably interstate trade and commerce in the long distance hauling of freight, in violation of Section 1 of the Sherman Act. [*Denied*]

IIIc. Plaintiffs have combined and conspired to monopolize and have attempted to monopolize, interstate trade and commerce in the long distance hauling of freight, in violation of Section 2 of the Sherman Act. [*Denied*]

IVc. Counterclaimants have been injured in their business and property as a result of the violations by plaintiffs of Sections 1 and 2 of the Sherman Act, and are entitled to three-fold the damages suffered by them, together with costs and reasonable attorneys' fees. [*Denied*]

Vc. The violations by plaintiffs of Sections 1 and 2 of the Sherman Act are continuing, and threaten to do irreparable damage to counterclaimants, who are entitled to an injunction against the continuance of these offenses. [*Denied*]

Respectfully submitted,

BARNES, DECHERT, PRICE, MYERS & RHOADS,
Attorneys for The Pennsylvania Railroad Company;

HAROLD B. BORNEMANN,
Attorney for Lehigh & New England Railroad Company;

DRINKER BIDDLE & REATH,
Attorneys for The Central Railroad Company of New Jersey, Central Railroad Company of Pennsylvania, Norfolk & Western Railway Company, Western Maryland Railway.

GUCKES, SHRADER & BURTT,
Attorneys for The Baltimore & Ohio Railroad Company;

MONTGOMERY, MCCRACKEN, WALKER & RHOADS,
Attorneys for Eastern Railroad Presidents Conference;

MORGAN, LEWIS & BOCKIUS,
Attorneys for Erie Railroad Company, the Reading Company;

DANIEL MUNGALL, JR.,
Attorney for Boston & Maine Railroad, Delaware and Hudson Railroad Corporation, Maine Central Railroad Company, New York, New Haven & Hartford Railroad Company;

MYERS, MCVEIGH, MANSFIELD & O'BRIEN,
Attorneys for The New York Central Railroad Company;

SAUL, EWING, REMICK & SAUL,
Attorneys for Lehigh Valley Railroad Company.

APRIL 5, 1957

OPINION ON DAMAGES, ATTORNEY'S FEE AND INJUNCTIVE RELIEF.

July 22, 1958

CLARY, *J.*

This case is presently before the Court for entry of final judgment. The problems presented are (1) what injunctive relief shall be granted; (2) a proper assessment of damages, and (3) fixing a reasonable attorney's fee to be awarded the successful litigants, the plaintiffs. Considering point 2 first, there is no doubt, as is set forth in the body of the Opinion in this case handed down on October 10, 1957 (155 F. Supp. 768), that plaintiff Pennsylvania Motor Truck Association (PMTA) has sustained damages as a result of the illegal conspiracy found in this case. As in nearly every case involving violation of the antitrust statutes, there is, and the Court is fully aware of the problem involved, great difficulty in determining the exact amount of damages sustained by the plaintiff association. *Bigelow v. RKO Radio Pictures*, 327 U. S. 251 (1946); *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555 (1931); *Eastman Kodak Co. v. Southern Photo Materials Co.*, 273 U.S. 359 (1927). The Court is also fully cognizant that damages may not be based upon sheer conjecture. *Story Parchment Co. v. Paterson Parchment Paper Co.*, supra; *Kobe, Inc. v. Dempsey Pump Co.*, 198 F. 2d, 416 (10th Cir. 1952), *cert denied* 344 U.S. 837 (1952). However, the fact that there is difficulty in determining an exact amount from the proofs adduced is a risk of which the wrongdoer defendants may not complain. The Court, under the *Eastman Kodak Co.; Story Parchment Company* and *Bigelow* cases, is entitled to award damages based upon reasonable inferences to be drawn from the testimony adduced. As against that there is the cautionary statement in *Homewood Theatre v. Loew's, Inc.*, 110 F. Supp. 398, 412 (D.C. Minn. 1952), that "the purpose of the Sherman Act

and the protection granted therein to those who have been damaged by wrongdoers in violation thereof should not be thwarted by making the act a haven for those who attempt to transform their actual damage into a fortuitous windfall". With these principles in mind we proceed to an examination of the claimed damages on the part of the Pennsylvania Motor Truck Association (PMTA).

The claim of the plaintiff Pennsylvania Motor Truck Association (PMTA) is based principally upon the total of all monies it paid to Allied Public Relations Associates, Inc. from May of 1952 to 1957. Included in these charges are not only its public relation activities but all expenditures in connection with the present suit. Certain other direct payments to individuals, printing houses and other organizations are also included, the details of which need not be outlined. Also claimed are a series of direct payments by PMTA for public relation purposes, from 1949 to 1957 independently of the Allied charges and based upon the increase in PMTA's direct public relations program over and above the average of its direct expenditure for that purpose for the years 1942 to 1949, the date when the Court found the conspiracy was formed. These sums aggregate $866,482.62 which, if allowed in full, would mean treble damages in the amount of $2,599,447.86.

The Court in its opinion, particularly in reference to the counterclaim, has characterized certain of the activities of the truckers as not proving a conspiracy in violation of the Sherman and Clayton Acts but, on the contrary, has characterized some of them as falling within the realm of fair competition in the light of the competitive situation then existing. The Court further stated categorically that such activities did not in and of themselves establish a conspiracy on the part of the truckers against the railroads. Because of these statements in the opinion, counsel for the plaintiffs have argued that all costs outlined above are reimbursable in a treble amount. This conclusion, of course,

does not follow and the Court rejects the imposition of damages based upon that assumption. While many of these factors were not found to be sufficient to convince the Court of the existence of a truckers' conspiracy, it does not follow as a matter of course that the Court is obligated to find that they were defensive measures. There were many activities of the truckers and Allied which had no connection with the present suit, were extremely beneficial to the truckers, and which could not possibly be classified as appropriate defensive measures of the conspiracy found to be existing in this case.

Another promise upon which counsel for the plaintiffs have argued that they should be awarded damages is the finding of the Trial Judge in the opinion that he believed the testimony of Noerr and Charnay that the purpose for the hiring of Allied was primarily to make an investigation of the activities of the railroads and, if sufficient evidence was adduced, to institute a law suit to compel cessation of illegal activities. The Court reiterates its finding in that regard but also finds that the activities of Charnay went far and beyond purely defensive measures. Charnay in the years of 1953 and 1955 expended large sums of money for public relation activities on behalf of the truckers over and beyond amounts necessary to counteract the previous activities of the railroad-Byoir conspiracy and for many purposes entirely disassociated with the railroad-truckers' fight. Insofar as these independent activities can be segregated, no allowance will be made therefor. Where the activities were in the main directed at defensive measures, even though there may be some incidental benefit to the truckers along other lines and cannot be separated, allowance will be made therefor. Examples of the type of activities that will not be allowed are as follows: Reimbursement to Allied for legal expenses without showing the necessity therefor and some connection with the obligations of Allied to PMTA. The only suggestion made as to the necessity for these expenses is that Charnay consulted certain

lawyers not connected with the present litigation as to whether there might be a right of action under the antitrust laws. Expenses of this nature have never been held to constitute part of damages awarded in antitrust actions. Another type of expense which has been attempted to be recovered here is that of a fund-raising organization hired to solicit funds from truckers throughout the country in support of the present law suit. Its compensation was based upon a percentage of funds solicited. The Court sees no basis for an allowance of this expenditure as damages in an antitrust action.

The attention of the Court has likewise been called to certain expense accounts, particularly of Charnay, head of Allied, when he attended conventions of the Teamsters' Union; on one occasion to help in re-election of Dave Beck as head of the Teamsters' Union in Los Angeles, and another time in Miami, Florida, to solicit teamsters' help for PMTA in the prosecution of the present law suit. An analysis of these two accounts indicates a total lack of connection with the present suit as to the Los Angeles trip. Insofar as the Miami trip was concerned, it shows an expenditure in excess of $4,000 within a relatively few days; also that the beneficiaries of those expenditures were officers and members of PMTA. That type of expenditure will also be disregarded in a calculation of damages.

The record in this case clearly indicates that concurrent with the institution of the present action the railroads and Byoir drastically reduced their scope of public relations operation. That is not to say that they ceased all activities looking toward the ultimate objective. The record indicates that close contact was kept by the railroad and Byoir with those individuals and organizations which had theretofore supported them and their point of view. On the other hand, the expenses of Allied in publicizing what has come to be known in this case as the Green affidavit and the facts elicited in depositions taken on behalf of the plaintiffs in this case reached extreme proportions, the cost of which cannot

by any stretch of the imagination be classified as defensive measures. Nevertheless, the plaintiffs herein attempt to recover all of these expenses, trebled, on the ground that the newspapers of the United States and press services were either not competent or might fail to give the facts the press coverage they really deserved. Plaintiffs argue that because the railroads were in a quiescent stage, but able and willing to resume activities should they prevail in this action, the activities of Allied and the expenses therefor should be considered as proper defensive costs. In making this assertion plaintiffs entirely ignore the fact that one of the prayers, and one of the most important prayers for relief in the complaint, was injunctive relief. The Court has found that they are entitled to such relief and it is being granted. There was, insofar as this case is concerned, no necessity whatever for the expenditure of fantastically high sums in publicizing this law suit. In effect, the plaintiffs have attempted to create monetary damages based upon the threat of a continuance of a course of conduct. The threat of such continuance is properly a subject for injunctive relief but any claim for monetary damages based thereon must be denied as being entirely too remote. After a full consideration of all the evidence the Court is satisfied that PMTA has suffered single damages in the sum of $217,358.00.

With respect to the problem as to what injunctive relief should be granted, the defendants question the power of the Court on constitutional grounds to enjoin the activities which they carried on in this case. See Noerr Motor Freight, Inc., et al. vs. Eastern Railroad Presidents Conference, et al., 155 F. Supp. 768, 820 (D.C. E.D. Pa. 1957). The defenses there mentioned have been again advanced. Particular emphasis has been laid on deprivation of the constitutional rights of freedom of speech, freedom to assemble and freedom to petition the legislature. Without further extended discussion the Court rejects the arguments made

on the ground that in making them the defendants have ignored the fact finding of the Court that a conspiracy in restraint of trade actually existed. "Equity has power to eradicate the evils of a condemned scheme by prohibition of the use of admittedly valid parts of an invalid whole". *United States v. Bausch & Lomb Optical Co.*, 321 U.S. 707, 724 (1944); *Ethyl Gasoline Corp. v. United States*, 309 U.S. 436, 461 (1940).

It is the duty of the Court to frame a decree which will suppress the unlawful practices found to exist and to take such reasonable measures as will preclude their revival. *Ethyl Gasoline Corp. v. United States*, supra at 461; *United States v. Crescent Amusement Co.*, 323 U.S. 173, 188 (1944). The injunctive relief in this case will, therefore, be designed to restrict the unlawful practices found to exist heretofore and to prevent future repetition of like nature.

The final question to be decided is the amount of counsel fees. Such allowance is authorized by Title 15 U.S.C.A. Section 15. The general rule is that the fixing of attorney's fees is within the discretion of the trial court reasonably exercised and that a court of review will only interfere where there is an abuse of that discretion. *W. W. Montague & Co. v. Lowry*, 193 U.S. 38 (1904); *Connecticut Importing Co. v. Frankfort Distilleries*, 101 F.2d, 79 (2nd Cir. 1939); *Milwaukee Towne Corp. v. Loew's, Inc.*, 190 F.2d 561 (7th Cir. 1951).

The reasonableness of an attorney's fee can only be determined with reference to a particular case. What is reasonable under one set of circumstances may be entirely unreasonable under another. A review of the cases indicates some of the factors considered by the courts in making an award of a "reasonable attorney's fee". These include: (1) whether plaintiff's counsel had the benefit of a prior judgment or decree in a case brought by the government, *Twentieth Century-Fox Film Corp. v. Brookside Theatre Corp.*, 194 F.2d, 846, 858-859 (8th Cir. 1952); *William H.*

Rankin Co. v. Associated Bill Posters of United States, 42 F.2d, 152-156 (2nd Cir. 1930); *Bordonaro Bros. Theatres v. Paramount Pictures*, 113 F.Supp. 196, 197 (D.C. W.D. N.Y. 1953); (2) the standing of counsel at the bar—both counsel receiving the award and opposing counsel, *Straus v. Victor Talking Machine Co.*, 297 Fed. 791, 806 (2nd Cir. 1924); *Darden v. Besser*, 147 F. Supp. 370, 382 (D.C.E.D. Mich. 1956); *Webster Motor Car Co. v. Packard Motor Car Co.*, U.S.D.C. D.C. June 30, 1955, C. A. 674-53 (Holtzoff, J. unreported); *Cape Cod Food Products v. National Cranberry Ass'n.*, 119 F. Supp. 242-244 (D.C. Mass. 1954), and *Bordonaro Bros. Theatres v. Paramount Pictures*, supra at 197. Contra *Milwaukee Towne Corp. v. Loew's, Inc.*, 190 F.2d 561, 570-571 (7th Cir. 1951); (3) time and labor spent, *Darden v. Besser*, supra at 382; (4) magnitude and complexity of the litigation, *Darden v. Besser*, supra at 382; *Webster Motor Car Co. v. Packard Motor Car Co.*, supra. Contra *Milwaukee Towne Corp. v. Loew's, Inc.*, supra at 570-571; (5) responsibility undertaken, *Darden v. Besser*, supra at 382; (6) the amount recovered, *Cape Cod Food Products v. National Cranberry Ass'n.*, supra at 242-244. Contra *Milwaukee Towne Corp. v. Loew's, Inc.*, supra at 571; and (7) the knowledge the Court has of the conferences, arguments that were presented and of work shown by the record to have been done by attorneys for the plaintiffs prior to trial, *Applebaum and Sims v. Paramount Pictures, Inc.*, 1950-1951, CCH TRADE CASES par. 62, 944 (D.C. S. D. Miss. 1951).

In addition to all the factors mentioned above two other tests have been proposed by equally eminent jurists for use by courts in carrying out the duty imposed on them by the statute. These two tests merit further discussion.

In the case of *Cape Cod Food Products v. National Cranberry Assn.*, supra at 244, Judge Wyzanski determined that the reasonable attorney's fee contemplated in 15 U.S. C.A. § 15 is "what it would be reasonable for counsel to charge a victorious plaintiff. The rate is the free market

price, the figure which a willing successful client would pay a willing successful lawyer".

The other test was proposed by Judge Holtzoff in his unreported opinion in *Webster Motor Car Co. v. Packard Motor Car Co.*, supra. In that case Judge Holtzoff stated:

> "Although there are some expressions to the contrary, it is the view of this Court that in such a case as this, it is not the function of the court to fix the fee that counsel should charge his client, and then assess that against the defendant. My conception is that it is the duty of the court to determine what contribution shall be made by the defendant toward the fees of plaintiff's counsel. I say that lest there be any misunderstanding, it is not my intention to determine or express an opinion or even an intimation how much plaintiff's counsel should charge his client. I might say in passing that in my opinion the amount that the plaintiff's counsel is entitled to charge his client is much larger than the amount I intend to award as the amount to be paid by the defendant."

In the case of *Milwaukee Towne Corp. v. Loew's, Inc.*, supra at 570, Chief Judge Major stated flatly that any agreement between plaintiff and his counsel regarding compensation is "wholly immaterial to the issue before the court," i.e., what is a reasonable attorney's fee? The court thus concludes that any agreement between a willing successful client and a willing successful lawyer as to compensation is not determinative of what is a "reasonable attorney's fee" under 15 U.S.C.A. § 15.

The Court also is not convinced of the correctness of Judge Holtzoff's conception that it is the duty of the court in making its award of attorney's fees under 15 U.S.C.A. § 15 "to determine what contribution shall be made by the defendant *toward* the fees of plaintiff's counsel" (emphasis supplied). While the Court feels that neither of these tests is the proper one to be applied under 15 U.S.C.A.

15, the Court is of the opinion that they do represent the poles at some point between which the true standard lies. Any attempt to fix exactly at what point between these poles the true test lies would be fruitless. To further attempt to ascertain the intent of Congress in providing for the award of a "reasonable" attorney's fee would be futile and serve only to confuse the issue.

It has been apparent in a review of the cases respecting the award of counsel fees in antitrust actions that there has developed a percentage theory of compensation based upon the award of single damages. It is readily understandable that such a procedure could be entirely proper under the circumstances of a particular case. However, in the instant case, we have the unusual situation where the plaintiffs in order to expedite the trial of the case and to obtain a more prompt determination of the rights and liabilities of the parties have stipulated that they would not claim certain damages to which they might otherwise be entitled. This Stipulation greatly shortened the trial of the case. To adopt a percentage approach would, therefore, do a grave injustice to the plaintiffs. Counsel for the plaintiffs in this case, prominent and experienced members of the Philadelphia Bar, have spent over forty-six hundred hours in the preparation and trial of this case. Any award based upon a moderate percentage of the single damages would, therefore, be entirely inadequate to constitute a reasonable attorney's fee.

The Court is of the opinion that the test to be applied may be stated quite simply—what, in the opinion of the Trial Judge, after considering all the factors in the case (including but not limited to those outlined above), would be a reasonable charge for the services of plaintiffs' counsel? The statement is simple; application is very difficult. However, after a consideration of all the factors in the case, the arguments and briefs of counsel, the Court awards Two Hundred Thousand ($200,000.00) Dollars as a reasonable attorney's fee.

It has been brought to the attention of the Court that under the decision of *Dextone Co. v. Building Trades Council of Westchester County, et al.*, 60 F.2d 47 (2d Cir. 1932), since this action sounds in tort and is for the vindication of a private, not a public right, in a civil, not a criminal proceeding, a joint rather than a several judgment must be entered without apportionment of damages among the respective parties. Such a joint judgment will be entered in this case.

A formal final decree will be filed concurrently herewith.

ORDER IN MILLS NOVELTY CO. v. NATIONAL DAIRY PRODUCTS CORPORATION, AT LAW NO. 44394 (N. D. ILL. 1936—UNREPORTED).

DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

MILLS NOVELTY CO., a corporation, *Plaintiff*, v. NATIONAL DAIRY PRODUCTS CORPORATION, a corporation, et al, *Defendants.*	At Law No. 44394

ORDER.

THIS CAUSE came on to be heard April 6, 1936, on oral argument on the several written motions of the defendants NATIONAL DAIRY PRODUCTS CORPORATION, HYDROX CORPORATION, J. D. ROSZELL COMPANY, CHAPELL ICE CREAM COMPANY, INC., NATIONAL DAIRY PRODUCTS COMPANY, INC., CONSOLIDATED PRODUCTS COMPANY, HIGHLAND DAIRY FARMS COMPANY, SUGAR CREEK CREAMERY COMPANY, THOMPSON ICE CREAM COMPANY, ALLEN ICE CREAM COMPANY, FREDERICK J. BRIDGES and LEE M. PEDIGO, by Nicholson, Snyder, Chadwell & Fagerburg, their attorneys; PREMIER DAIRY BRANDS, INC. (a Delaware corporation), THE BORDEN SALES COMPANY, INC. (a New York corporation), BORDEN'S MILK PRODUCTS COMPANY, INC. (a Delaware corporation), THE BORDEN COMPANY (an Illinois corporation), BORDEN'S CONDENSED MILK COMPANY OF ILLINOIS (an Illinois corporation), BORDEN'S CONFECTIONERY & FOODS COMPANY (an Illinois corporation), BORDEN'S DAIRY COMPANY (an Illinois corporation), BORDEN'S FARM PRODUCTS CO. OF ILLINOIS, INC. (an Illinois

corporation), BORDEN'S BUTTER & EGG COMPANY (an Illinois corporation), JOHN T. CUNNINGHAM ICE CREAM COMPANY, INC. (an Illinois corporation), JERSEY ICE CREAM COMPANY, INC. (an Illinois corporation), THE CITY DAIRIES COMPANY, INC. (an Illinois corporation), WIELAND DAIRY COMPANY, INC. (an Illinois corporation), CLOVERLEAF MILK COMPANY (an Illinois corporation), WIELAND ICE CREAM COMPANY, INC. (an Illinois corporation), FRED D. WALMSLEY, PAUL J. DONOVAN and ALLAN D. CUNNINGHAM, by Cutting, Moore & Sidley, their attorneys; and GOLDEN STATE SALES CORPORATION, by Fisher, Boyden, Bell, Boyd & Marshall, their attorneys, all of said motions praying that certain allegations in the complaint filed herein be stricken as herein set forth;

And the Court having heard oral arguments by counsel for said defendants in support of said motions and by counsel for the plaintiff in opposition thereto, and having read and considered briefs filed by counsel for the respective parties;

And it appearing to the Court that paragraphs one hundred seventeen (117), one hundred eighteen (118), one hundred nineteen (119), one hundred twenty (120), one hundred twenty-one (121), one hundred twenty-two (122), one hundred twenty-three (123), one hundred twenty-seven (127) and one hundred twenty-nine (129), and the matter hereinafter quoted contained in paragraphs eighty (80) and one hundred nine (109), charge in substance that in furtherance of and in pursuance of an alleged conspiracy to boycott and restrain the interstate commerce of the plaintiff and to make the same effective defendants prepared and sponsored legislation and ordinances in bad faith to be introduced in the legislatures and municipal legislative bodies in various states and cities in the guise of health and sanitary regulations but with the secret purpose of suppressing competition from counter freezers, some of said laws and ordinances having been enacted and others proposed and not

enacted; used such pending legislation to delay and defeat the purchase of counter freezers; threatened to prepare and sponsor prohibitive state and municipal legislation if prospective purchasers of counter freezers did not desist from purchasing or using counter freezers; worked with state and local governmental officials, prevailing upon them and assisting them in harassing and interfering with prospective purchasers and operators of counter freezers; and that other allegations in the aforesaid paragraphs and portions thereof are to the same effect;

And it further appearing to the Court that any alleged laws enacted or alleged acts done by the state and local governments or officials thereof cannot be made the basis for the recovery of damages under the federal anti-trust laws whether or not sponsored by the defendants in the course of an alleged conspiracy in restraint of trade; and it further appearing to the Court that said allegations do not charge the commission of unlawful acts by the defendants; that said alleged activities of the defendants in sponsoring or threatening to sponsor state or local legislation or governmental action amounted to nothing more than the exercise or statement of intention to exercise their right peaceably to assemble and petition the government for a redress of grievances; that such right is protected by the First Amendment to the Constitution of the United States against congressional interference, irrespective of whether such laws or governmental acts were subsequently enacted or carried out; that said allegations do not charge acts or offenses prohibited by the anti-trust laws; and that this Court cannot take cognizance of the plaintiff's grievances, if any, arising out of the said alleged acts of the defendants;

Now, Therefore, Be It and It Is Ordered and Adjudged:

(1) That paragraphs one hundred seventeen (117), one hundred eighteen (118), one hundred nineteen (119), one hundred twenty (120), one hundred twenty-one (121), one

hundred twenty-two (122), one hundred twenty-three (123), one hundred twenty-seven (127) and one hundred twenty-nine (129) of the complaint filed herein April 29, 1935, be and they hereby are, and each of them hereby is, stricken from the complaint.

(2) That the following matter contained in paragraph one hundred nine (109) of said complaint:

> "public officials, legislatures and governmental bodies of municipalities in the several states of the United States and in the cities, towns and villages thereof"

is hereby stricken from the complaint.

(3) That the following matter contained in paragraph eighty (80) of said complaint:

> "and a legislative bureau which contacts with health and food officials and which keeps a record of all state and city legislatures relating to ice cream and advises with its members, including the corporate defendants herein, in regard to such legislation, as well as keeping them informed upon the progress of such legislation"

is hereby stricken from the complaint.

Exception for the pltf because order not in accord with memorandum & of motion.

D L B

4/15/36

ENTER:

BARNES,
Judge.

Dated: April 21, 1936.

MEMORANDUM OPINION IN MILLS NOVELTY COMPANY v. THE BORDEN COMPANY, 3 CCH TRADE REG. REP. ¶ 25,041 (S. D. N. Y. 1937—NOT OFFICIALLY REPORTED) AND RELEVANT PARAGRAPHS OF THE COMPLAINT.

Mills Novelty Company v. The Borden Company
United States District Court, Southern District of New York, March 11, 1937.

MEMORANDUM

PATTERSON, D. J. Sponsoring legislation and inciting administrative officials to do what must be taken as their duty cannot be an actionable wrong. The fact that these things are done in furtherance of a combination to restrain interstate commerce does not make them actionable. *American Banana Co. v. United Fruit Company*, 213 U. S. 347, 358. It follows that paragraph 83 in part, paragraphs 91-97 inclusive, and paragraph 102 should be stricken as irrelevant. This is in accord with the decision of Judge Barnes in the District Court for the Northern District of Illinois and with the ruling of the Federal Trade Commission.

The action being one for treble damages, there is no room for punitive damages over and above the trebled amount. I agree with what Judge Knox said in *Hansen Packing Co. v. Armour Co.*, 16 Fed. Supp. 784, 788. Paragraph 118 will be stricken, as will the corresponding clause in the prayer for relief.

PARAGRAPHS OF THE COMPLAINT REFERRED TO IN JUDGE PATTERSON'S DECISION

83. That on or about and between the first day of January 1931, up to the present date, defendants individually

and collectively, and as members of the "International Association" and/or affiliated associations, entered into a combination and conspiracy to defame, disparage, boycott, and harass the plaintiff and prevent and restrain it from engaging in interstate commerce by exercising their great influence and their suppressive means and methods, and by using coercive means upon the public, persons, firms, corporations, publications, public officials, legislatures and governmental bodies of municipalities in the several states of the United States and in the cities, towns and villages thereof, including customers and prospective customers of plaintiff to the ultimate damage and destruction of plaintiff's business, in a manner more particularly set forth herein, and have united in a common cause of unfair competition and have cooperated and confederated with each other and with other persons, firms and corporations not herein named as defendants because they are not within the jurisdiction of this court, in a conspiracy to prevent, suppress and delay the sale, marketing, installation, purchase, use of and operation of "Counter Freezers" including "counter freezers" manufactured by plaintiff herein by unfair acts, tactics, methods, practices, things done or attempted to be done, and each of them.

91. That in furtherance of and in pursuance of said combination and conspiracy to boycott and restrain the interstate commerce of the plaintiff and to make the same effective, defendants, their officers, directors, servants, employees and agents called upon and worked with the various city and state sanitary inspectors and officials to prevail upon them and assist them in harassing and interfering with prospective purchasers and operators or owners and operators of "counter freezers" to the extent of causing them great loss of time, heavy financial expense and causing them to discontinue the installation of or use and operation of said "counter freezers" including "counter freezers" manufactured by plaintiff, and more particularly,

the defendants, their officers, directors, servants, employees and agents prevailed upon said officials to classify said "counter freezers" as an ice cream factory thereby imposing upon said owners or operators of "counter freezers" the burden of providing all the expensive and complicated equipment which are necessary in a manufactory engaged in the wholesale manufacture of ice cream, rendering the operation of such "counter freezers" unprofitable and impracticable, all to the damage of plaintiff's "counter freezer" business.

92. That in furtherance of and in pursuance of said combination and conspiracy to boycott and restrain the interstate commerce of the plaintiff and to make the same effective the "International Association", its affiliated associations and members thereof, including the defendants herein, their officers, directors, servants, employees and agents prepared and sponsored legislation and local ordinance or amendment thereto in bad faith to be introduced and sponsored by its members including the defendants herein, into the law-making bodies of the several states and cities with the apparent purpose and guise of such legislation and local ordinance or amendments thereto, to qualify, unify and establish a standard of sanitary regulations for the manufacture of ice cream, but with the secret and undisclosed unlawful purpose and intent behind such legislation and local ordinance or amendments thereto, and the undisclosed unlawful effect of the provisions of the same being, to destroy or suppress the growth of competition from "counter freezers" and making it impossible or practically impossible for prospective purchasers and operators of "counter freezers" to enter the field for operators or owners of "counter freezers" or to continue in the field; with the principal intent of the defendants, their officers, directors, servants, employees and agents in preparing and sponsoring such legislation and local ordinance or amendments thereto is shown in the following situation, among others, that as

soon as they succeeded in introducing the same, they used this pending legislation or pending local ordinance, or pending amendment or amendments thereto as a threat, club or coercive measure to delay and defeat the purchase of "counter freezers" including "counter freezers" manufactured by plaintiff and eliminate the continued use and competition of "counter freezers"; with the bad faith of the defendants, their officers, directors, servants, employees and agents in preparing and sponsoring such legislation and local ordinances or amendments thereto is shown by the situation, among others, that the proposed provision that all ice cream mix must be pasteurized at the point of freezing—a requirement which would work an extreme hardship on "counter freezer" operators and owners, was "soft peddled" and laid aside, because it was found that many members of the "International Association", including the defendants herein, could not meet this regulation without heavy expense; and in the added situation, amongst others, that in their zeal to secure stringent regulations which could be met by members of the "International Association" including the defendants herein, but not by the "counter freezer" operators and owners, members of the "International Association", including the defendants herein presented bills, ordinances or amendments thereto, to their respective law-making bodies which were defeated because of their unnecessarily drastic provisions, with the result that the "International Association" began advising their members, including the defendants herein, to avoid setting up these specific drastic regulatory provisions in proposed statutes, ordinances or amendments thereto; but rather to make these proposed enactments general in nature with the provision that a supervisory authority set up appropriate regulations for the carrying out of the act, ordinance or amendment with it being secretly pointed out to the members of the "International Association", including the defendants herein, that the chances of getting drastic regulations directed against the installation, use and occupation of

"counter freezers" adopted by an administrative authority were much better than getting them approved by law-making bodies, all to the detriment and damage of plaintiff's interstate business.

93. That in furtherance of and in pursuance of said combination and conspiracy to boycott and restrain the interstate commerce of the plaintiff and to make the same effective the "International Association", and its members including the defendants herein, their officers, directors, servants, employees and agents threatened to prepare and introduce and sponsor prohibitive state legislation, local ordinances and amendments thereto, as set forth in paragraph "92" above, if prospective purchasers and operators of "counter freezers" do not desist from purchasing said "counter freezers", do not desist from using and operating said "counter freezers," all to the damage of this plaintiff.

94. That in furtherance of and in pursuance of said combination and conspiracy to boycott and restrain the interstate commerce of the plaintiff and to make the same effective, legislation and regulation was proposed in the various municipalities, cities and states of the U. S. for the purpose of imposing upon owners of "counter freezers" the burden of paying exorbitant license fees for the privilege of operating such "counter freezers", all to the damage of this plaintiff.

95. That plaintiff has been up to great trouble, embarrassment and expense in thwarting such proposed legislation and in preventing the classification of "counter freezers" as manufacturing plants and in eliminating the burden imposed by such proposed legislation upon the owners and operators and proposed owners and operators of "counter freezers" including those manufactured by plaintiff.

96. That in furtherance of and in pursuance of said combination and conspiracy to boycott and restrain the in-

terstate commerce of the plaintiff and to make the same effective the classification of "counter freezers" as manufacturing plants, in accordance with ordinances, regulations and laws now in effect or being prepared in the various municipalities, cities and states of the U. S., require the following: That the owners of such "counter freezers" pasteurize the mix at the point of manufacture, use live steam for sterilization and cleansing purposes; maintain a separate freezing room; construct the floors of the freezing room so that the same shall slope to a drain; that the floors of the freezing room be composed of some impervious material such as concrete or tile; all of which requirements were unnecessary for the sanitary operation of the "counter freezers" and were proposed or enacted to discourage and did discourage the purchase and operation of such "counter freezers" to the detriment and damage of the business of the plaintiff.

97. That in furtherance of and in pursuance of said combination and conspiracy to boycott and restrain the interstate commerce of the plaintiff and to make the same effective, and despite plaintiff's efforts to thwart such proposed legislation and in preventing such classification of "counter freezers" and its attendant burdens, the defendants, their officers, directors, agents, servants and employees succeeded in having such legislation enacted as laws in various municipalities, cities and states of the U. S. all to the damage of this plaintiff.

102. That in furtherance of and in pursuance of said combination and conspiracy to boycott and restrain the interstate commerce of the plaintiff and to make the same effective and in order to discourage the sale of "counter freezers" manufactured by the plaintiff to state institutions such as hospitals, legislation was proposed to the effect that all subdivisions of the state and all state institutions were to refrain from going into business now operated by private individuals or private institutions, all to the damage of this plaintiff.

ORDER IN MILLS NOVELTY CO. v. WESTERN DAIRIES, INC., AT LAW NO. 7506-M (S. D. CAL. 1937—UNREPORTED) AND RELEVANT PARAGRAPHS OF AMENDED COMPLAINT.

ORDER.

At a stated term, to wit: The September term, A. D. 19 , of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Friday the thirty-first day of December in the year of our Lord one thousand nine hundred and thirty-seven.

Present:

THE HONORABLE: PAUL J. McCORMICK, *District Judge*.

MILLS NOVELTY CO., A CORPORATION, *Plaintiff*	
v.	At Law No. 7506-M
WESTERN DAIRIES, INC., A CORPORATION, ET AL., *Defendants.*	

The pleadings by the government in prosecutions or suits against offenders of anti-trust laws of the United States are not to be governed by the same rules that are applicable to actions by private suitors against competitors to recover damages under Section 7 of the Sherman Act (26 Stat. 210).

The former pertain to rights and duties of the sovereign power to prevent and redress public wrongs and to safeguard the public interest against monopoly and unlawful discrimination. These prerogatives of sovereignty

necessitate liberality in pleading in order to accomplish the public purpose of anti trust legislation. In private actions such as this case, the proceeding is of a purely private nature—the redress of a private tort—and the litigant claiming damages must by appropriate pleadings allege the specific and concrete facts which are the damnifying elements that have injured his interstate activities and business.

The Ninth Circuit Court of Appeals, in *Foster & Kleiser Co. v. Special Site Sign Co.*, 85 F. (2d) 742, has clearly ruled that in private actions it is not the conspiracy that furnishes the right of recovery, but rather the particular injuries to the plaintiff that result and flow from the conspiracy of the defendants. Such being the controlling rule here, the complaint must, as against demurrer, allege the specific interstate acts or transactions of the respective defendants from which the plaintiff company claims that it has sustained pecuniary damages.

We think it also clear from the *Foster & Kleiser* decision, *supra*, that the applicable statute of limitations (Subdivision 1, Section 338, California Code of Civil Procedure) bars any damaging acts or transactions, not fraudulently concealed, prior to March 3, 1933.

The allegations of lack of knowledge and concealment in paragraphs CXXII and CXXIII of the amended complaint are mere conclusions, and in the light of the court's knowledge from the records and files of this case and of the prior ruling on demurrer entered herein on May 19, 1937, these two allegations should be regarded as sham and frivolous. See *Morse v. Lewis*, (C. C. A. 1) 54 F. (2d) 1029; *United States v. Greater New York Live Poultry Chamber of Commerce*, 53 F. (2d) 518.

The allegations of punitive or vindictive damages found in paragraph CXXXIV of the amended complaint are improper and irrelevant in a private action for damages under Section 7 of the Sherman Act. The measure of relief is the statute and its provision for trebling the actual

damages precludes any further damage claim. See *Hansen Packing Co. v. Armour & Co.*, 16 Fed. Supp. 788.

The several special demurrers of respective defendants that question the sufficiency and certainty of the amended complaint and particularly the allegations of paragraphs LXXXXVIII to and including CXX inclusive are sustained. Exceptions allowed plaintiff.

The several motions of the respective defendants to strike from the amended complaint paragraphs CXXII and CXXIII are granted, and said paragraphs are and each is stricken from said amended complaint. Exceptions allowed plaintiff.

The several motions of the respective defendants to strike from the amended complaint paragraph CXXXIV and all other portions of said amended complaint relating to or praying for "punitive or vindictive damages" other than such as are expressly provided for in Section 7 of the Sherman Act (26 Stat. 210) are granted. Exceptions allowed plaintiff.

In amplification of the aforesaid ruling and because the special demurrer of defendants Borden Dairy Delivery Company, Inc., and the Borden Company of California, Ltd., are typical and substantially the same as the special demurrers of each defendant respectively herein, the following parts of the special demurrer of defendants Borden Dairy Delivery Company, Inc., and The Borden Company of California, Ltd., are sustained viz:

Paragraph II, 1 (a), (b), (c), (g), (h), (k), (m), (n), (q); 2 (a), (b), (c), (g), (h), (j), (m), (n), (o); 3 (a), (b), (c), (d); 4 (a), (b), (c); 5 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n); 6 (a), (b), (c); 7 (a), (b), (d), (e); 8 (a), (b), (d); 9 (a), (b), (d), (e); 10 (a), (b), (c), (d), (e); 11 (a), (b), (c); 12 (a), (b), (c); 13 (a); 14 (a), (b), (c); 15 (a), (b), (c); 16 (a), (b); 17 (a), (b), (c), (d); 18 (a), (b); 19 (a), (b), (c); 20 (a), (b); 21 (a), (b); 22 (a); 23 (a), (b), (c); 24; Paragraph III; Paragraph IV, and Paragraph V.

The plaintiff is allowed thirty (30) days from notice of this ruling within which to amend the amended complaint herein.

In the interests of economy of time and records, the foregoing rulings and orders are made applicable to and are entered as to each demurring and movent defendant in this action, without restating and rewriting said order as to each defendant separately. The foregoing order is applicable to and is intended for the benefit of defendants Adohr Milk Farms, Qualitee Dairy Products Company, Hage's Ltd., Beverly Dairies, Ltd., and Excelsior Creamery Company, Ltd.; Borden Dairy Delivery Company, Inc., the Borden Company of California, Ltd.; Mountain View Dairies, Inc.; Creameries of America, Inc.; Crown City Dairy Company, Peacock Dairies, Inc., George Stanley McKenzie, Paul R. Chaney, Olive W. Johnson, P. A. Kells, George W. Weatherly, Haydon Ice Cream Co.; Good Humor Ice Cream Co., Inc.; Ice Cream Council of Southern California; Western Dairies Inc., Wester Dairy Products Company, Western Dairy Products, Inc., Samuel Harry Berch, Kaufman L. Carver, George W. Burt, J. Frank Holt, John A. Tongue, Henry E. McGee, Roger W. Jones, Edward G. Roller, Herbert Sponholz, John Richards, and William Anderson Taylor, sued herein as William Ambrose Taylor; Golden State Company, Ltd., Golden State Ice Cream Company, Kenneth H. Keefer as trustee of Pacific Dairy Products Company, Chester Earl Gray, Lowell H. Wilson, Oliver B. Wyman, John Freuler, Frank B. Pellissier, Thomas B. Eastland, John Frederick Eastwood, Ella W. Ennis, Kenneth H. Keefer, Walter G. Gaeteke and Harry S. Baird; and Chapman Ice Cream Company.

A True Copy. Feb. 26 1953
Attest, Etc.

Edmund L. Smith, Clerk U. S. District Court,
(Seal) Southern District of California

By L. CUNLIFFE, Deputy
"L. Cunliffe"

RELEVANT PARAGRAPHS OF AMENDED COMPLAINT REFERRED TO IN JUDGE MCCORMICK'S ORDER.

(35) LXXXXVIII.

That on or about and between the 1st day of January, 1931, up to the present date, defendants, individually and collectively, and as members of the "International Association" and/or affiliated associations, entered into a combination and conspiracy to defame, disparage, boycott, and harass the plaintiff and prevent and restrain it from engaging in interstate commerce by exercising their great influence and through subversive means and methods, and by using coercive means upon the public, persons, firms, corporations, publications, public officials, legislatures and governmental bodies of municipalities in the several states of the United States and in the cities, towns and villages thereof, including customers and prospective customers of plaintiff to the ultimate damage and destruction of plaintiff's business, in a manner more particularly set forth herein, and have united in a common course of unfair competition and have co-operated and confederated with each other and with other persons, firms and corporations not herein named as defendants because they are not within the jurisdiction of this Court, in a conspiracy to prevent, suppress and delay the sale, marketing, installation, purchase, use of and operation of "Counter Freezers," including "Counter Freezers" manufactured by plaintiff herein by unfair acts, tactics, methods, practices, things done or attempted to be done, and each of them.

* * *

(39) CVI.

That in furtherance of and in pursuance of said combination and conspiracy to boycott and restrain the interstate commerce of the plaintiff and to make the same effective, defendants, their officers, directors, servants, employees and agents called upon and worked with the various city and state sanitary inspectors and officials to prevail upon them and assist them in harassing and interfering with

prospective purchasers and operators or owners and operators of "Counter Freezers" to the extent of causing them great loss of time, heavy financial expense and forcing them to discontinue the installation of or use and operation of said "Counter Freezer" including "Counter Freezers" manufactured by plaintiff, and, more particularly, the defendants, their officers, directors, servants, employees and agents prevailed upon said officials to classify said "Counter Freezers" as an ice cream factory thereby imposing upon such owners or operators of "Counter Freezers" the burden of providing all the expensive and complicated equipment which are necessary in a manufactory engaged in the wholesale manufacture of ice cream, rendering the operation of such "Counter Freezers" unprofitable and impractical, all to the damage and destruction of plaintiff's "Counter Freezer" business.

CVII.

That in furtherance of and in pursuance of said combination and conspiracy to boycott and restrain the interstate commerce of the plaintiff and to make the same effective, the "International Association," its affiliated associations and members thereof, including the defendants herein, their officers, directors, servants, employees and agents prepared and sponsored legislation and local ordinances or amendments thereto in bad faith to be introduced and sponsored by its members, including the defendants herein, into the law-making bodies of the several states and cities with the apparent purpose and guise of such legislation (40) and local ordinances or amendments thereto, to clarify, unify and establish a standard of sanitary regulations for the manufacture of ice cream, but with the secret and undisclosed unlawful purpose and intent behind such legislation and local ordinances or amendments thereto, and the undisclosed unlawful effect of the provisions of the same being, to destroy or suppress the growth of competition from "Counter Freezers" and making it impossible or practically impossible for prospective purchasers and operators of "Counter Freezers" to enter the field or for operators

and owners of "Counter Freezers" to continue in the field; that the true intent of the defendants, their officers, directors, servants, employees and agents in preparing and sponsoring such legislation and local ordinances or amendments thereto is shown in the following situation, among others, that as soon as they succeeded in introducing the same, they used this pending legislation, or pending local ordinance, or pending amendment or amendments thereto as a threat, club or coercive measure to delay and defeat the purchase of "Counter Freezers" including "Counter Freezers" manufactured by plaintiff, and eliminate the continued use and competition of "Counter Freezers"; that the bad faith of the defendants, their officers, directors, servants, employees and agents in preparing and sponsoring such legislation and local ordinances or amendments thereto is shown by the situation, amongst others, that the proposed provision that all ice cream mix must be pasteurized at the point of freezing—a requirement which would work an extreme hardship on "Counter Freezer" operators and owners, was "soft pedalled" and laid aside, because it was found that many members of the "International Association," including the defendants herein, could not meet this regulation without heavy expense; and in the additional situation, amongst others, that in their zeal to secure stringent regulations which could be met by members of the "International Association," including the defendants here, but not by the "Counter Freezer" operators and owners, members of the "International Association," including the defendants herein, presented bills, ordinances or amendments thereto, to their respective law-making bodies which were defeated because of their unnecessarily drastic provisions, with the result that the "International Association" began advising its members, including the defendants herein, to avoid setting up these specific drastic regulatory provisions in proposed statutes, ordinances or amendments thereto; but rather to make these proposed enactments general in nature with the provision that a supervisory authority set up appropriate regulations for

the carrying out of the act, ordinance or amendment, with (41) it being secretly pointed out to the members of the "International Association," including the defendants herein, that the chances of getting drastic regulations directed against the installation, use and operation of "Counter Freezers" adopted by such an administrative authority was much better than getting them approved by law-making bodies, all to the detriment and damage of plaintiff's interstate business.

CVIII.

That in furtherance of and in pursuance of said combination and conspiracy to boycott and restrain the interstate commerce of the plaintiff and to make the same effective, the "International Association" and its members including the defendants herein, their officers, directors, servants, employees and agents threatened to prepare, introduce and sponsor prohibitive state legislation, local ordinances and amendments thereto, as set forth in paragraph "CVII" above, if prospective purchasers and operators of "Counter Freezers" do not desist from purchasing said "Counter Freezers" and operators and owners of "Counter Freezers" do not desist from using and operating said "Counter Freezer," all to the damage of this plaintiff.

CIX.

That in furtherance of and in pursuance of said combination and conspiracy to boycott and restrain the interstate commerce of the plaintiff and to make the same effective, legislation and regulations were proposed in the various municipalities, cities and states of the United States for the purpose of imposing upon owners of "Counter Freezers" the burden of paying exorbitant license fees for the privilege of operating such "Counter Freezers", all to the damage of this plaintiff.

CX.

That in furtherance of and in pursuance of said combination and conspiracy to boycott and restrain the inter-

state commerce of the plaintiff and to make the same effective, the classifications of "Counter Freezers" as manufacturing plants, in accordance with (42) ordinances, regulations, and laws now in effect or being prepared in the various municipalities, cities and states of the United States, require the following: that the owners of such "Counter Freezer" pasteurize the mix at the point of manufacture; use live steam for sterilization and cleansing purposes; maintain a separate freezing room; construct the floors of the freezing room so that the same shall slope to a drain; that the floors of the freezing room be composed of some impervious material such as concrete or tile; all of which requirements were unnecessary for the sanitary operation of the "Counter Freezer" and were proposed or enacted to discourage and did discourage the purchase and operation of such "Counter Freezer" to the detriment and damage of the business of the plaintiff.

CXI.

That in furtherance and in pursuance of said combination and conspiracy to boycott and restrain the interstate commerce of the plaintiff and to make the same effective, the defendants, their officers, directors, agents; servants and employees succeeded in having such legislation enacted as laws in various municipalities, cities and states of the United States, all to the damage of this plaintiff.

* * *

(44) CXVI.

That in furtherance of and in pursuance of said combination and conspiracy to boycott and restrain the interstate commerce of the plaintiff and to make the same effective; and in order to discourage the sale of "Counter Freezers" manufactured by the plaintiff to state institutions, such as hospitals, legislation was proposed to the effect that all subdivisions of the state and all state institutions were to refrain from going into business now operated by private individuals or private institutions, all to the damage of this plaintiff.

DECREE IN CAROLENE PRODUCTS COMPANY v. EVAPORATED MILK ASSOCIATION, EQUITY NO. 15573 (N. D. ILL. 1937—UNREPORTED).

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CAROLENE PRODUCTS COMPANY, a Corporation, *Plaintiff*	Equity No. 15573
v.	
EVAPORATED MILK ASSOCIATION, an Association, et al, *Defendants*	

DECREE

This cause coming on to be heard on the defendants' motion to dismiss plaintiff's amended bill of complaint,

And it appearing to the Court that said amended bill of complaint charges in substance that the defendants have combined and conspired to restrain the interstate commerce of the plaintiff in violation of the anti-trust laws of the United States; that in pursuance of said alleged conspiracy, and to make said conspiracy effective defendants have disseminated false statements regarding the wholesomeness and healthfulness of plaintiff's product and to the effect that customers and dealers in plaintiff's product are violating the law and will be prosecuted; employed attorneys, agents and others to prepare and cause to be introduced in the legislatures of various States and Congress proposed legislation to prohibit or tax the manufacture and

sale of plaintiff's product; and employed attorneys, agents and others to assist the enforcement officials of various States in maintaining the constitutionality of and enforcing the laws of such States prohibiting the manufacture or distribution of plaintiff's product;

And it further appearing to the Court that the prayer of said amended bill of complaint is that the defendants be temporarily and permanently enjoined from disseminating statements that plaintiff's product is unhealthful, unwholesome or dangerous or deleterious to health or manufactured, shipped or sold in violation of law, and from furnishing or supplying legal assistance to the adversaries of the plaintiff in any suit or action in which plaintiff may be a party and in which defendants are not parties, and from suggesting the introduction of any law or assisting in the passage of any law which would prohibit the manufacture, possession or sale of plaintiff's product or levy a tax thereon;

And the Court having read and considered said amended bill of complaint and the defendants' motion to dismiss, and having heard the arguments of counsel and being advised in the premises.

And it further appearing to the Court:

1. That the said amended bill of complaint does not state a good cause of action in equity against the defendants or any or either of them, or show that the defendants have been guilty of any unlawful acts or misconduct in the premises;

2. That the amended bill of complaint is lacking in certainty and particularity, and the allegations thereof are so vague and uncertain as to fail to state a cause of action against the defendants;

3. That the allegations of said bill of complaint with reference to the defendants' supposed unlawful acts are the conclusions of the pleader, unsupported by statements of ultimate fact;

4. That it does not appear by said amended bill of complaint that the defendants have disseminated or are disseminating false statements concerning the wholesomeness of the plaintiff's product or plaintiff's business;

5. That it appears by the allegations of said amended bill of complaint that plaintiff is engaged in the sale and distribution of filled milk in interstate commerce in violation of federal law and cannot assert its supposed cause of action in this Court for want of equity and unclean hands;

6. That the alleged activities of the defendants in procuring State or local legislation are not unlawful; said activities amount to nothing more than the exercise of the right of the defendants peaceably to assemble and petition the government for a redress of grievances, which right is protected by the First Amendment to the Constitution of the United States; such alleged activities are not prohibited by the anti-trust laws or other laws of the United States of America, and this Court can not take cognizance of the plaintiff's grievances, if any, arising out of the said alleged acts of the defendants;

7. That the alleged activities of the defendants in inciting and assisting administrative and police officials in the enforcement of the laws of the United States and the several States are not prohibited by the laws of the United States; it is the duty of the citizens of the United States to assist police and administrative officials in the enforcement of the laws, and to restrain the citizens of the United States in the fulfillment of this duty would be against public policy and beyond the powers of this Court.

8. That sponsoring legislation and inciting administrative officials to do what must be taken as their duty cannot be an actionable wrong and the fact that these things might be done in furtherance of a combination to restrain interstate commerce would not make them actionable.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff's bill of complaint and amended bill of complaint heretofore filed in this cause be and the same are dismissed for want of equity at plaintiff's costs.

ENTER:

HOLLY
Judge